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Supreme Court of the United States

OCTOBER TERM, 1954

No. 173

AMALGAMATED CLOTHING WORKERS OF AMERICA AND CLEVELAND JOINT BOARD OF THE AMALGAMATED CLOTHING WORKERS OF AMERICA, PETITIONERS,

vs.

THE RIC[illegible]AN BROTHERS COMPANY

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

PETITION FOR CERTIORARI FILED JUNE 28, 1954

CERTIORARI GRANTED OCTOBER 14, 1954

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1954

No. 173

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vs.

THE RICHMAN BROTHERS COMPANY

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[fols. 1-2] **IN UNITED STATES DISTRICT COURT**

DEFENDANT'S EXHIBIT No. 7

PETITION FOR INJUNCTION AND EQUITABLE RELIEF

IN THE COURT OF COMMON PLEAS

No. 641936

STATE OF OHIO,
County of Cuyahoga, ss:

THE RICHMAN BROTHERS COMPANY, a corporation, 1600 East 55th Street, Cleveland, Ohio, Plaintiff,

vs.

AMALGAMATED CLOTHING WORKERS OF AMERICA, an unincorporated association,

CLEVELAND JOINT BOARD OF AMALGAMATED CLOTHING WORKERS OF AMERICA, an unincorporated association, 2227 Payne Avenue, Cleveland, Ohio,

LOCAL No. 112 OF AMALGAMATED CLOTHING WORKERS OF AMERICA, an unincorporated association, 2227 Payne Avenue, Cleveland, Ohio,

LOCAL No. 162 OF AMALGAMATED CLOTHING WORKERS OF AMERICA, an unincorporated association, 2227 Payne Avenue, Cleveland, Ohio,

LOCAL No. 168 OF AMALGAMATED CLOTHING WORKERS OF AMERICA, an unincorporated association, 2227 Payne Avenue, Cleveland, Ohio,

LOCAL No. 188 OF AMALGAMATED CLOTHING WORKERS OF AMERICA, an unincorporated association, 2227 Payne Avenue, Cleveland, Ohio,

BERYL PEPPERCORN, individually and as Manager and a member of Cleveland Joint Board of Amalgamated Clothing Workers of America, and as an agent and a member of Amalgamated Clothing Workers of America and of one of the Locals, No. 112, No. 162, No. 168 and No. 188, of Amalgamated Clothing Workers of America, 2511 Laurelhurst Drive, University Heights, Ohio,

JACK KROLL, individually and as a Vice President and a member of Amalgamated Clothing Workers of America,

and as a member of the General Executive Board of Amalgamated Clothing Workers of America, Vernon Mannor Hotel, Cincinnati, Ohio,

[fol. 3] Henry T. Becker, individually and as an agent and member of Amalgamated Clothing Workers of America, 1928 East 90th Street, Cleveland, Ohio,

Frank Varanese, individually and as a business agent of Cleveland Joint Board of Amalgamated Clothing Workers of America and as an agent and a member of Amalgamated Clothing Workers of America, and of one of the Locals, No. 112, No. 162, No. 168 and No. 188, of Amalgamated Clothing Workers of America, 3662 West 47th Place, Cleveland, Ohio,

Max Amdur, individualy and as a business agent of Cleveland Joint Board of Amalgamated Clothing Workers of America, and as an agent and a member of Amalgamated Clothing Workers of America, and of one of the Locals, No. 112, No. 162, No. 168 and No. 188, of Amalgamated Clothing Workers of America, 3311 Clarendon Road, Cleveland Heights, Ohio,

Joe Kynkor, individualy and as a business agent of Cleveland Joint Board of Amalgamated Clothing Workers of America, and as an agent and a member of Amalgamated Clothing Workers of America, and of one of the Locals, No. 112, No. 162, No. 168 and No. 188, of Amalgamated Clothing Workers of America, 1870 East 75th Street, Apartment 407, Cleveland, Ohio,

Richard Roe, whose real name is unknown to plaintiff, individually and as an agent of Amalgamated Clothing Workers of America and of Cleveland Joint Board of Amalgamated Clothing Workers of America,

John Doe, whose real name is unknown to plaintiff, individually and as an agent of Amalgamated Clothing Workers of America and of Cleveland Joint Board of Amalgamated Clothing Workers of America,

Frank Roe, whose real name is unknown to plaintiff, individually and as an agent of Amalgamated Clothing Workers of America and of Cleveland Joint Board of Amalgamated Clothing Workers of America,

Charles Doe, whose real name is unknown to plaintiff, individually and as an agent of Amalgamated Clothing

Workers of America and of Cleveland Joint Board of Amalgamated Clothing Workers of America,

and

ROBERT ROE, whose real name is unknown to plaintiff, individually and as an agent of Amalgamated Clothing Workers of America and of Cleveland Joint Board of Amalgamated Clothing Workers of America, Defendants

[fol. 4] First Cause of Action

1. Plaintiff The Richman Brothers Company is a corporation organized and existing under and by virtue of the laws of the State of Ohio. It is and for many years has been engaged in the business of making and selling men's clothing and of buying and selling other articles of men's wear, which is a highly competitive business. Its main factory and its principal office and place of business are located at 1600 East 55th Street, Cleveland, Ohio. Its only other factory is located at Sturgis, Kentucky. Except for odd trousers made at its factory in Sturgis, Kentucky, all clothing made by plaintiff is made at its factory in Cleveland, Ohio.

2. Plaintiff now owns and operates 69 stores, only 5 of which were started since January 1, 1951. In such stores plaintiff sells at retail clothing made by it and other articles of men's wear which it buys at wholesale from various suppliers. Of plaintiff's stores, 3 are in Cleveland, 15 are in fourteen other cities in Ohio and 51 are in thirty-one cities in fifteen other states in the United States.

3. In excess of ninety percentum of plaintiff's gross sales of clothing made by plaintiff is comprised of sales at plaintiff's retail stores. Less than one percentum consists of custom made, factory and mail order sales. The balance consists of sales by plaintiff made at wholesale to certain other retailers. Approximately eighty percentum of plaintiff's gross sales from its stores is comprised solely of clothing made by plaintiff and the balance is comprised of sales of other articles of men's wear purchased by plaintiff at wholesale from the various suppliers thereof.

[fol. 5] 4. Exclusive of its executive, supervisory and office personnel, plaintiff employs approximately 2424 per-

sons. Of such employees, about 1398 are employed in its factory in Cleveland, Ohio; about 76 are employed in its factory in Sturgis, Kentucky; and about 950 are employed in its 69 stores. Of such employees in plaintiff's stores, approximately 74 are employed in its 3 stores in Cleveland, Ohio, there being about 52 such employees in its stores at 736 Euclid Avenue, about 16 such employees in its store at 2097 Ontario Street, and about 6 such employees in its store at 5716 Broadway Avenue.

5. Plaintiff's factory in Cleveland, Ohio, is more than two miles from its nearest store. Plaintiff has no store in or near Sturgis, Kentucky.

6. The defendant Amalgamated Clothing Workers of America, hereinafter sometimes referred to as "Amalgamated", is a labor organization. It is affiliated with the Congress of Industrial Organizations. It is an unincorporated association of such of the workers in, and others identified with, the clothing industry as are members of it. Its members are very numerous and it is impracticable to bring them all before the Court. It operates within the State of Ohio and in most, if not all, of the states and in all of the larger cities of the United States, in which clothing is manufactured. Its operations are substantially nation-wide. It claims a membership of about 380,000 persons.

7. The supreme governing body of the Amalgamated is its General Executive Board which is comprised of certain individuals as members thereof, including the principal officers of Amalgamated. Under authority of Amalgamated, there are many local labor organizations in various places in various states of the United States, herein referred to as "Locals", which are local labor union affiliates of Amal- [fol. 6] gamated. Also under authority of Amalgamated, there exists in each of various localities in the United States, a local governing body of Amalgamated, which is known as a Joint Board of a particular area or locality. Each such Joint Board is comprised of representatives from the Locals of Amalgamated, which operate within the area which such Joint Board has jurisdiction. Each such Joint Board is the principal local governing Body for the Locals within the area of its jurisdiction as respects all

matters which are of joint or common concern of such locals. Each such Local and each such Joint Board are under the jurisdiction of, and subject to substantial control by, Amalgamated. Each of such Locals and Joint Boards and their respective members, all of whom are members of Amalgamated, are a part of and are agencies of Amalgamated and are employed and directed by Amalgamated in the carrying out of its course of conduct with respect to plaintiff, which is subsequently herein complained of.

8. The defendant Cleveland Joint Board of Amalgamated Clothing Workers of America, hereinafter sometimes referred to as Cleveland Joint Board, is one of the Joint Boards, above referred to, of the defendant Amalgamated and is a branch through which the defendant Amalgamated operates in the district comprised, in part, of the Cleveland, Ohio area. The Cleveland Joint Board is an unincorporated association. It is a labor organization comprised of representatives from the Locals of Amalgamated which operate in the area over which such Joint Board has jurisdiction. Its members are very numerous and it is impracticable to bring them all before the Court.

9. Each of the defendants, Local No. 112, Local No. 162, Local No. 168 and Local No. 188, all of Amalgamated, is a [fol. 7] Local and an affiliate of defendant Amalgamated, located and operating within the State of Ohio, in the Cleveland, Ohio area, is a labor organization and is an unincorporated association whose members are very numerous and it is impracticable to bring them all before the Court. All members of each of said Locals in this paragraph referred to are members of the defendant Amalgamated and are subject to the jurisdiction, policies and control of defendant Amalgamated.

10. Defendant Jack Kroll is a Vice President and a member of defendant Amalgamated and he is a member of the General Executive Board of defendant Amalgamated. The defendant Henry T. Becker is a National Representative and a member of defendant Amalgamated and is one of the principal agents of defendant Amalgamated with respect to directing such of the activities against plaintiff in the Cleveland, Ohio area as are subsequently herein complained of. The defendant Beryl Peppercorn is a member, and is the manager and as such is the chief officer, of the defend-

ant Cleveland Joint Board of defendant Amalgamated. Each of the defendants Frank Varanese, Max Audur and Joe Kynkor is a business agent of the defendant Amalgamated or of its Cleveland Joint Board. Each of the four individual defendants last named in this paragraph is a member and an agent of the defendant Locals named in the caption of this petition.

11. Plaintiff is ignorant of, and has been unable to ascertain, the true name of any of the defendants who are designated herein by the fictitious names of Richard Roe, John Doe, Frank Roe, Charles Doe and Robert Roe, respectively. Each of such defendants last referred to is an employee and agent of defendant Amalgamated or of defendant Cleveland Joint Board, or of one or more of the defendant Locals [fol. 8] Nos. 112, 162, 168 and 188 of Amalgamated, and is a picket at one of plaintiff's stores in Cleveland, Ohio.

12. Neither the defendant Amalgamated nor any other labor organization or person is the representative, for purposes of collective bargaining with plaintiff, of those of plaintiff's employees at its factories and/or its stores, who are eligible for any such representation by defendant Amalgamated. No notice has been given to plaintiff that defendant Amalgamated, or any other labor organization or person, claims to be such representative or to be entitled to be recognized or dealt with as such by plaintiff.

13. There is not now, and there has not been at any time subsequently herein referred to, any strike of any of plaintiff's employees or any labor dispute between plaintiff and any of its employees.

14. Commencing on March 31, 1951, and continuously since that time, defendant Amalgamated, its several joint Boards and Locals together with its officers, agents and members, both as such and as individuals, have been and continue to be engaged, and the defendants are now engaged, in carrying forward a conspiracy to cause economic pressure to be directed against plaintiff with the intention and for the purpose and objective of thereby causing plaintiff to force sufficient of its eligible employees to become members of defendant Amalgamated, so that defendant Amalgamated may become the representative of its such employees for the purposes of collective bargaining with plaintiff, regardless of the desires of a majority thereof.

15. The conspiracy aforesaid has been and is being carried forward, as it unless restrained by order of this Court, [fol. 9] will continue to be carried forward by causing economic pressure to be directed against plaintiff by the methods and means as follows:

(a) Commencing on March 31, 1951 and continuing since that time, the defendants and others referred to in the above paragraph 14 hereof, have caused and are causing various of plaintiff's stores, including the greater number thereof and the three Cleveland stores, to be picketed almost continuously during business hours. Such picketing is being and has been carried on generally by one or two, in some instance by several, in other instances by many, pickets at each picketed store. None of such pickets is an employee of plaintiff. Each such picket while on duty parades to and fro immediately in front of the main entrance to the picketed store and carries and displays one or two large banners bearing in large, highly colored letters one or more printed inscriptions over, or in association with, the name of the defendant Amalgamated. The inscriptions which are most frequently so displayed are of the following report:

Richman Bros. clothes are not union made. Buy union made clothes.

Richman Bros. clothes do not have a union label. Buy clothes which have a union label.

(b) From time to time since March 31, 1952, the defendants and others referred to in the above paragraph 14 hereof have caused, and continue to cause, in addition to the picketing referred to in the above subparagraph 15 (a), special sporadic picketing demonstrations to be made immediately in front of certain of plaintiff's stores in certain of the larger cities, including Cleveland, Ohio. On such occasions as many as 15 to [fol. 10] 20, and in some instances more persons, at times singing and shouting, mill about in a closely formed group to and fro in front of the main entrance of the picketed store during a substantial portion of the store's business hours on a particular day or evening.

None of such pickets is an employee of plaintiff. Such pickets carry banners, signs on long poles and inflated balloons on long cords, bearing printed inscriptions of substantially the same import as those above described in subparagraph 15 (a) hereof. On such occasions, at times, some of the pickets carry signs bearing printed inscriptions of the import that certain labor organizations, other than the defendant Amalgamated and its Joint Boards and Locals, are participating in the picketing and cooperating with defendants in their picketing campaign against plaintiff's retail selling business. On such occasions, the pickets, by their conduct and with the aid of their long poles and cords, create confusion in front of the picketed stores and so block the entrance to the picketed store as to divert much of the pedestrian traffic on the sidewalk outwardly from the entrance.

16. The picketing of stores of plaintiff has been and is being carried on with full knowledge on the part of defendants that there is a belief commonly accepted, entertained and acted upon by persons comprising a substantial part of the general public that no person without permission of the picketing union may rightfully cross a picket line maintained by it at an employer's place of business, or enter any such picketed place for the purpose of having business relations with such employer.

17. As a direct and proximate result of the carrying forward of said conspiracy by the picketing of stores of plain-[fol. 11] tiff with the intention and for the purpose and objective aforesaid, plaintiff, since March 31, 1951, has been, and continues to be, damaged in its business. Such picketing has excluded and continues to exclude prospective customers from the picketed stores, has decreased and continues to decrease plaintiff's sales and consequently plaintiff's production. The number of prospective customers which have been so excluded from plaintiff's picketed stores, the amounts by which plaintiff's sales and production have been so decreased, and the amount of such damages which have been so sustained by plaintiff are necessarily speculative and not readily ascertainable or provable. As a result of such picketing, plaintiff has sustained, and unless such picketing shall be enjoined, plaintiff will continue to sustain

irreparable damages. Plaintiff has no adequate remedy at law.

18. Plaintiff is ignorant with respect to, has been unable to obtain and, except through the use of interrogatories hereunto annexed, has no means of ascertaining: (a) the true name of any of the defendants who have been herein designated by the fictitious names Richard Roe, John Doe, Frank Roe, Charles Doe and Robert Roe, respectively, and (b) the name or the residence or other address or place of whereabouts of any of the officers of any of the defendants, Local No. 112, Local No. 162, Local No. 168 and Local No. 188, each being a local of and affiliated with defendant Amalgamated. The true name of each of the six individuals herein designated by a fictitious name and the name, residence address and office held in any such Local, of each of the officers of each of said four Locals previously in this paragraph referred to, are material to the cause of action herein set forth and are within the knowledge of defendant Beryl Peppercorn, individually or as an officer or member of defendant Cleveland Joint Board of defendant Amalgamated, [fol. 12] to whom the interrogatories hereunto annexed are directed for being severally answered by him.

Second Cause of Action

19. Plaintiff incorporates herein by reference and adopts the same as if fully herein rewritten, all averments set forth in each of the foregoing paragraphs numbered 1 through 18 of the above stated First Cause of Action.

20. The conspiracy herein complained of and carried forward as aforesaid is, and at all times since March 31, 1951 has been, a continuing unreasonable restraint of trade in the State of Ohio. It is continuing to be effectuated by those referred to in the above paragraph 14 hereof, acting in combination and concert, with the intention, for the purpose and with the effect of injuring plaintiff in its business, restraining plaintiff in its sales of clothing at its stores in Ohio, restraining plaintiff, through a lessening of its sales, in its production of clothing in Ohio, and restraining plaintiff, through a lessening of its sales, in its shipments of clothing and other related commodities in Ohio, all of which is in violation of the applicable statutes, commonly known as the Valentine Act, and common law of the State of Ohio.

Wherefore, plaintiff prays:

A. That there be issued forthwith a temporary restraining order, pending further order of the Court, restraining the defendants and the respective branches, locals, officers, members and agents of each of the defendant associations and their agents, and all persons to whom knowledge of such order shall come from picketing and from doing any act to cause or to encourage any picketing, of any of plaintiff's stores;

[fol. 13] B. That upon final hearing hereof, there be issued a permanent injunction enjoining those referred to in the above paragraph A in the respects therein described;

C. That plaintiff be granted all such other and further relief as shall be just and proper;

D. That the defendant Beryl Peppercorn, individually or as an officer or member of defendant Cleveland Joint Board of defendant Amalgamated, answer the interrogatories annexed to this petition; and

E. That the defendants and each of them be ordered to pay the costs herein of plaintiff.

JDC & R. Jones, Day, Cockley & Reavis, 1759 Union Commerce Building, Cleveland 14, Ohio, MAin 1-5800, Attorneys for Plaintiff.

ANNEXED INTERROGATORIES PROPOUNDED BY PLAINTIFF

The following interrogatories, propounded by plaintiff, are annexed to the foregoing petition and are directed to, and to be severally answered by, the defendant Beryl Peppercorn individually or as an officer or member of defendant Cleveland Joint Board of Amalgamated Clothing Workers of America, as prayed for in the petition:

Interrogatory 1

What is the true name and residence address of each [fols. 14-15] of the persons engaged during some business hours in carrying banners bearing the name, all in part, of the defendant Amalgamated Clothing Workers of America, in front of:

(a) Plaintiff's store at 736 Euclid Avenue, Cleveland, Ohio?

(b) Plaintiff's store at 2697 Ontario Street, Cleveland, Ohio?

(c) Plaintiff's store at 5716 Broadway Avenue, Cleveland, Ohio?

Interrogatory 2

What is the name and residence address of and the name of the office held by, each of the persons who are the officers of:

(a) Defendant Local No. 112 of Amalgamated Clothing Workers of America?

(b) Defendant Local No. 162 of Amalgamated Clothing Workers of America?

(c) Defendant Local No. 168 of Amalgamated Clothing Workers of America?

(d) Defendant Local No. 188 of Amalgamated Clothing Workers of America?

The Richman Brothers Company, (S.) by ——— ———, Its President.

[fol. 16] ANSWER OF AMALGAMATED

(This is the answer filed in the Ohio Court of Common Pleas, County of Cuyahoga, proceeding. It was originally filed in the United States District Court after the proceeding had been removed to that Court.)

[fol. 17] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT

No. 29671

[Title omitted]

ANSWER—Filed November 14, 1952 in United States District Court

Answer to First Cause of Action

Now come the defendants, and for Answer to the First Cause of Action:

1. Admit on information and belief the allegations contained in Paragraph 1 except that defendants, for want of

knowledge, deny the allegations therein contained that plaintiff's only other factory is located at Sturgis, Kentucky, and that all clothing, excepting odd trousers made at Sturgis, Kentucky, is made at its factory in Cleveland, Ohio.

2. Admit on information and belief the allegations contained in Paragraph 2 except that defendants, for want of knowledge, deny the allegations therein contained that only five of plaintiff's stores have been started since January 1, 1951, and that plaintiff sells at its stores articles of men's wear which it buys at wholesale from various suppliers.

3. For want of knowledge, deny the allegations contained in Paragraphs 3 to 5, inclusive, except that defendants admit the allegations contained in Paragraph 3 that in excess of ninety percentum of plaintiff's gross sales of clothing made by plaintiff is comprised of sales at plaintiff's retail stores.

4. Admit the allegations contained in paragraph 6 that defendant Amalgamated Clothing Workers of America is an unincorporated association, affiliated with the Congress of Industrial Organizations, of such of the workers in, and others identified with the clothing industry, as are members of it and defendants deny all of the other allegations therein contained.

[fol. 18] 5. Deny the allegations contained in Paragraphs 7, 8, 9, 10, 11 and 13 to 18, inclusive, except that defendants admit the allegations contained in Paragraph 8 that the Cleveland Joint Board is an unincorporated association with numerous members and a labor organization, and the allegation contained in Paragraph 9 that Locals 112, 162, 168 and 188 are labor organizations with numerous members and unincorporated associations, and the allegation contained in Paragraph 10 that Jack Kroll is a vice-president and member of defendant Amalgamated and a member of its General Executive Board. By way of further answer to the allegations contained in Paragraph 15 defendants allege that plaintiff is and has been non-union in all of its manufacturing and retail operations; that since on or about March, 1951, defendants have been engaged in a campaign to organize employees of plaintiff; that in furtherance of said organizational campaign, defendants have from time to time since said date informed the consuming public

through the media or radio broadcasts, sound trucks, newspaper advertisements, meetings, leaflets and peaceful pickets, of the fact that plaintiff is non-union; that the picketing of which plaintiff complains has been peaceful and truthful; and that the signs carried by the pickets generally bore the following legends:

Richman Brothers Clothes are not union made.
Buy union made clothes.
Richman Brothers Clothes do not have a union label.
Buy clothes which have a union label.

6. Admit the allegations contained in Paragraph 12 except that defendants deny that defendant Amalgamated is not the representative of plaintiff's eligible employees for purposes of collective bargaining and, by way of further answer, defendants allege that persons employed by plaintiff have designated the Amalgamated Clothing Workers of America as their representative for purposes of collective bargaining with plaintiff.

Answer to Second Cause of Action

7. Now come the defendants, and for Answer to the Second Cause of Action incorporate all the matters set forth in their answer to the First Cause of Action and deny all the allegations set forth by the plaintiff in its Second Cause of Action.

[fol. 19] The defendants attach hereto Answers to the Interrogatories requested by the plaintiff.

Wherefore, defendants pray that application of the plaintiff for a temporary injunction be denied, that the petition of the plaintiff be dismissed and that plaintiff be ordered to pay the costs of this action.

(S.) Moses Krisloy, Union Commerce Bldg., Cleveland, Ohio. (S.) William J. Corrigan, Williamson Building, Cleveland, Ohio.

[fol. 20] *Answer to Interrogatories*

Answer to Interrogatory No. 1:

The names and addresses of the persons carrying banners at the three stores named in this interrogatory are as follows:

Nick Branibor, 9418 Union Ave.
Peter Denich, 715 Bolivar Road.
James Eckert, 1737 E. 19 Street.
Mirko Pocue, 547 Woodland Ave.
Frank Theus, 3516 Trowbridge Ave.

Answer to Interrogatory No. 2:

(a) Defendant Local No. 112:
Max Peppercorn, President, 2608 E. 153 Street.
Helen Psihauntas, Secretary, 1589 E. 55 Street.

(b) Defendant Local No. 162:
Frank Novak, President, 2810 Oak Park Ave.
Elizabeth Smolik, Secretary, 18001 Maple Heights Blvd.

(c) Defendant Local No. 168:
Mae Hendricks, President, 8906 Vineyard Ave.
Catherine Thomas, Secretary, 1808 Clover.

(d) Defendant Local No. 188:
Walter Kensicki, President, 17513 Mapleboro Road, Maple Heights, Ohio.
Stanley Woznicki, Secretary, 3867 E. 177 Street.

Certificate of service (omitted in printing.)

[fols. 21-22] Clerk's Certificate to foregoing paper omitted in printing.

[fol. 23] IN UNITED STATES DISTRICT COURT

DEFENDANTS' EXHIBIT NO. 6 A

Motion to Dismiss

In the Court of Common Pleas

[Title omitted]

No. 641,936

Now comes the defendants, and move this Honorable Court for an order dismissing the Petition of plaintiff herein and striking the said Petition from the files for the following reason:

That this court has no jurisdiction to hear or to determine the claim set forth in plaintiff's petition in that all of the labor conduct allegedly involved is within the field occupied by the Labor Management Relations Act of 1947 (29 U. S. C. A. Secs. 151 et seq.), (an Act of the United States Congress), and is preempted from and closed to State regulation.

This Motion to dismiss the Petition of plaintiff is limited to the ground herein set forth, lack of jurisdiction of this Court to hear and determine the merits thereof. Accordingly, this Motion is made without prejudice to the defend-[fols. 24-122] ants' right to move to dismiss the Petition for failing to state a cause of action.

Respectfully submitted, Moses Krislov, William J. Isaacson, Corrigan, McMahon & Corrigan, Attorneys for Defendants.

NOTICE

Plaintiff will take notice that the defendants have filed the foregoing Motion to Dismiss and that the same will be on for hearing at the convenience of the Court.

Moses Krislov, William J. Isaacson, Corrigan, McMahon & Corrigan, Attorneys for Defendants.

[fol. 123] In United States District Court

Defendants' Exhibit No. 8

Order of Connell, J., Denying Motion to Dismiss—March 12, 1953

Common Pleas Court, County of Cuyahoga, State of Ohio; Civ. Journal 329, p. 469

The within Motion to dismiss is considered as a Demurrer to the petition on the ground that this court has no jurisdiction of the subject of the action. Defendants' answer filed in the U. S. District Court on November 14, 1952 was filed with this court on March 11, 1953. The demurrer to this petition (so called Motion to Dismiss) is overruled. Plaintiff is given leave to reply or plead by March 28, 1953.

[fol. 124] In United States District Court

30096

Amalgamated Clothing Workers of America and Cleveland Joint Board of the Amalgamated Clothing Workers of America, Plaintiffs,

vs.

The Richman Brothers Company, Defendant

Complaint for Injunctive Relief—Filed March 16, 1953

Come now the plaintiffs and complain of defendant as follows:

1. This action arises under the National Labor Relations Act, as amended (29 USCA, Section 151, et seq.), an Act of Congress regulating interstate commerce (hereinafter referred to as the Act). The jurisdiction of this Court is invoked under Section 1337 of the Judicial Code, (28 USCA, Section 1337), which confers jurisdiction on the United States District Courts of any civil action or proceeding arising under any Act of Congress regulating commerce,

and under Section 1651 of the Judicial Code (28 USCA, Section 1651), which authorizes the United States District Courts to issue all writs necessary or appropriate in aid of their jurisdiction.

2. Plaintiff Amalgamated Clothing Workers of America is a voluntary unincorporated association and labor union of approximately 400,000 members employed in the men's clothing and allied industries throughout the United States and Canada with its principal office at 15 Union Square, New York, New York. Approximately 97% of all employees employed in the manufacture of men's clothing in the United States and Canada are members of Amalgamated. Plaintiff Cleveland Joint Board is a joint board of local unions affiliated with the Amalgamated Clothing Workers of America with its office and principal place of business at 2227 Payne Avenue, Cleveland, Ohio. Both plaintiffs are hereinafter referred to as the "Union".

[fol. 125] 3. Defendant, The Richman Brothers Company (herein referred to as "Richman"), is a corporation incorporated under the laws of Ohio and engaged in the manufacture, purchase and sale of men's clothing. It owns and operates two clothing factories in Ohio and Kentucky employing approximately 1,474 employees and approximately 69 stores located in 16 states, employing approximately 950 employees. In excess of 90% of Richman's gross sales of clothing is made through its 69 stores. Approximately 80% of the clothing sold by Richman's retail stores is manufactured by Richman. The operation by Richman of its business aforesaid affects commerce within the meaning of Sections 2(6) and (7) of the Act.

4. Richman, in the operation of its business as specified in Paragraph 3, is non-union.

5. Since on or about March 31, 1951, the Union has engaged in a campaign to organize employees of Richman and in a campaign to publicize the fact that Richman, among other employers, manufactures non-union clothing. In furtherance of these campaigns, the Union has from time to time informed the consuming public through the media of radio broadcasts, sound trucks, newspaper advertisements, meetings, leaflets and peaceful pickets of the fact that Richman is non-Union and requested the consuming public to

purchase union made clothing and not to purchase clothing made by non-union manufacturers, of which Richman is one. These activities have been and are taking place at the Richman factories, its retail stores and elsewhere. The signs carried by the pickets generally bear the following legends:

> "Richman Clothes are not union made. Buy union made clothing",

or

> "Richman Clothes do not have a union label. Buy clothes which have a union label."

The activities engaged in by the Union, including picketing, have been at all times and are, peaceful and truthful. [fol. 126] 6. On or about the 18th day of October, 1952, Richman, (as plaintiff therein), filed a suit in the Court of Common Pleas of Cuyahoga County, Ohio (Case #641936) against the Union and various of its affiliated local unions and agents. A copy of the summons and petition and other papers annexed thereto in said suit are annexed hereto as Exhibit I.

On or about the 14th day of November, 1952, the Union filed its Answer to said Petition, a copy of which is annexed hereto as Exhibit II.

By said suit, Richman seeks a temporary and permanent injunction enjoining the Union and its affiliated local unions from picketing and from doing any act to cause or encourage any picketing of any of Richman's stores. In said suit, Richman alleges in Paragraph 14 of its Petition as the gravamen of its application for an injunction that the Union, its affiliated local unions and officers, agents and members are engaged in "carrying forward a conspiracy to cause economic pressure to be directed against (Richman) with the intention and for the purpose and objective of thereby causing (Richman) to force sufficient number of its employees to become members of (the Union) so that (the Union) may become the representative of its such employees for the purpose of collective bargaining with (Richman) regardless of the desires of a majority thereof."

This allegation was denied in all its aspects by the Union in its Answer (Exhibit H). The true purpose of these picketing activities are specified in Paragraph 5 hereof.

7. The said picketing activities complained of by Richman affect commerce within the meaning of Sections 2 (6) and (7) of the Act.

8. The activities engaged in by the Union constitute the exercise of rights guaranteed by Section 7 of the Act (29 USCA, Section 157), and of the right of free speech guaranteed by the First and Fourteenth Amendments to the United States Constitution. Richman, by its State Court suit (specified in Paragraph 6 hereof), seeks to enjoin and [fol. 127] proscribe such rights and attempts to secure a decree which conflicts with and negates rights specifically guaranteed by the Act and the Constitution of the United States.

9. The activities complained of by Richman, as specified in Paragraphs 14 and 15 of its petition, if true, are activities in a field which Congress has preempted and closed to State regulation by the Act. Richman by its aforesaid suit seeks to enjoin activities in a field preempted by Congress and closed to State regulation, contrary to the United States Constitution, (Article VI, Sec. 2).

10. Alternatively, the activities complained of by Richman, as specified in Paragraphs 14 and 15 of petition, if true, charge an unfair labor practice within the meaning of the Act, 29 USCA 158 (b)(1). Richman, by its aforesaid suit, invades the exclusive jurisdiction of the National Labor Relations Board and, [to the extent provided in Sections 10(j) and 10(L) of the Act] of Federal District Courts to remedy unfair labor practices, contrary to the provisions of the Act, Article I, Section 8, and Article VI of the Constitution of the United States.

11. For the reasons set forth in Paragraphs 8, 9, and 10 hereof, and each of them, the Court of Common Pleas of Cuyahoga County is without jurisdiction to hear and determine the suit instituted by Richman.

12. (a) On the 28th day of January, 1953, the Union moved the Court of Common Pleas of Cuyahoga County, Ohio, for an order dismissing the suit commenced by Richman in said Court on the ground that the State Court was

without jurisdiction. The Union's motion to dismiss was denied by the Court of Common Pleas on the 12th day of March, 1953 and said court has thereby assumed jurisdiction over said suit.

13. Said assumption of jurisdiction is in derrogation of the underlying policies and express provisions of the Act, the Congressional objective of a uniform labor policy and the Constitution of the United States. Such unlawful invasion of the federal field would irreparably injure the Congressional objective expressly and carefully fashioned in legislative enactment.

[fol. 128] 14. Said assumption of jurisdiction by the Court of Common Pleas of Cuyahoga County constitutes a burden upon interstate commerce contrary to the Constitution of the United States.

15. Said assumption of jurisdiction subjects plaintiffs to oppressive and burdensome litigation before a forum without jurisdiction to pass upon the legality of the acts complained of by Richman.

16. Said assumption of jurisdiction threatens immediate destruction to the lawful objectives for which plaintiffs have vigorously struggled these many past years to achieve.

17. Plaintiffs have no adequate remedy at law.

Wherefore, plaintiffs pray:

1. That the Court issue an order directing defendant to appear and show cause why a preliminary injunction should not issue against defendant, its agents, servants, employees, attorneys and all persons acting in concert or participation with them:

(a) Requiring them to withdraw the action commenced in the Court of Common Pleas of Cuyahoga County, Ohio, entitled "The Richman Brothers Company vs. Amalgamated Clothing Workers of America, et al." (No. 641936);

(b) Enjoining and restraining them from taking any further steps in the action referred to in Prayer 1 (a), from instituting any further actions in said court or in any other State Court, the effect of which would be,

(i) to prevent or in any manner interfere with plaintiffs, their agents, servants, and employees in their rights to peacefully picket the premises of defendant

and by other means to organize the employees of Richman and to inform the public of the fact that Richman is non-union.

(ii) to deprive or attempt to deprive plaintiffs, their agents, servants and employees, of their rights to engage in concerted activities guaranteed plaintiffs by Section 7 of the Act, and the Constitution of the United States.

(iii) to charge a violation of Section 8 (b) of the National Labor Relations Act, (29 USCA, Sec. 158(b). [fol. 129] (iv) to in any manner interfere with, by-pass or frustrate the policies of Congress in preempting the field of activities engaged in by plaintiffs.

(v) to in any manner interfere with, by-pass or frustrate the provisions, and underlying policies of the National Labor Relations Act and jurisdiction of the National Labor Relations Board.

2. That upon return of said order, the Court issue a preliminary injunction enjoining and restraining defendant, its agents, servants, employees, attorneys and all other persons in active concert or participation with them, as set forth in Prayer 1 above.

3. That pending hearing and determination of the motion for a preliminary injunction, defendants, its agents, servants, employees and attorneys be stayed from taking any further steps in the action referred to by Prayer 1 (a) above.

4. That upon final hearing the Court issue a permanent injunction enjoining and restraining defendant, its agents, servants, employees and attorneys and all other persons in active concert or participation with them, as set forth in Prayer 1 above.

5. That the Court grant such other, further and equitable relief as may be just and proper in the premises.

Dated at Cleveland Ohio, this 16th day of March, 1953.

Amalgamated Clothing Workers of America, and Cleveland Joint Board of the Amalgamated Clothing Workers of America, by (S.) William J. Corrigan, Corrigan, McMahon & Corrigan, by (S.) Moses Krislov, William J. Isaacson, Attorneys for Plaintiffs.

[fol. 130] *Duly sworn to by Beryl Peppercorn. Jurat omitted in printing.*

[fol. 130a] Clerk's Certificate to foregoing paper omitted in printing.

[fol. 131] DEFENDANTS' EXHIBIT NO. 9

IN UNITED STATES DISTRICT COURT

OPINION, McNAMEE, J.—March 23, 1953

The Court: Gentlemen, I have given careful attention to the arguments made here this morning and I have carefully read the briefs filed in this case. I have no desire to discuss the matters that were argued before the Court of Common Pleas and are resubmitted in argument and in the briefs filed in this case and copies of briefs filed in the Common Pleas Court.

As I stated in the memorandum written in connection with the motion to remand, I think the question whether unfair labor practice has been charged is a matter for the state court to decide. I am not going to presume to discuss the matters that are, in my opinion, exclusively within the province of the court in the Richman Brothers action.

The Congress of the United States has recognized that [fol. 132] only in extraordinary situations may the Federal Court stay the hand of State Courts. It has provided since 1948 in language that admits of no interpretation, in language that is as clear, and as explicit as it can possibly be, as follows: "A court of the United States may not grant injunction to stay proceedings in a state court except as expressly authorized by Act of Congress, or, where necessary, as an aid of its jurisdiction or to protect or effectuate its judgment."

It has not been suggested that there is any act of Congress applicable here that would authorize this Court to stay the proceedings in the Common Pleas Court, this being an action between private parties, an action in which the National Labor Relations Board is not a party and is not seeking to vindicate its jurisdiction. Nor has it been sug-

gested—except as counsel for defense argues—that this court has jurisdiction of this proceeding.

This Court has held in the motion to remand—in granting the motion to remand that this court did not have jurisdiction of the case filed by Richman Brothers originally in the Common Pleas Court, and certainly there is nothing that could aid a jurisdiction which is now existent.

Now, as I recall it, this action was originally filed by Richman Brothers sometime last October. Shortly after service was obtained, a motion was filed by the Defendant in the State Court to quash service. That motion was overruled and the case was scheduled for hearing. That is, the application for temporary injunction was scheduled for hearing sometime in the early part of November last year. Two or three days before the assigned hearing date, the case was removed to this court. And subsequently a motion was filed by the Plaintiff to remand this case to the Common Pleas Court. That motion was heard by this Court in the latter part of December of last year. In January of this year this Court remanded the case holding that it had been [fol. 133] improvidently removed and set forth in a memorandum the reason for such action.

After the case went back to the Common Pleas Court, the Defendants filed a motion to dismiss for want of jurisdiction and there was submitted to the Common Pleas Court all, substantially, if not all, of the arguments now urged upon this Court in support of the application to stay the proceedings in Common Pleas Court.

Common Pleas Court considered all of the arguments, made, all of the cases cited and overruled the motion to dismiss. Whereupon the plaintiff again—the defendant again came to this court, this time as plaintiff, seeking now to have this Court stay the proceedings in the Common Pleas Court. And as I have indicated, I find that the matters presented in this Court does not come within any of the stated exceptions of Section 2283 of Title 28.

Counsel for the Plaintiff in this action makes a very skillful argument. He argues that on the basis of a case decided in New York and on the basis of the *Capitol Service* case, in this Court—that there is a distinction which this court ought to notice and enjoin the state court from proceeding. But it is quite clear that in the New York case,

which I haven't read, that the relief sought was denied and it is quite clear from the statement of the case as made by counsel for the Plaintiff, that in that action the National Labor Relations Board was a party. That is also true in the *Capitol Service* case. And in the *Capitol Service* case it is unquestionable that the National Labor Relations Board was seeking to vindicate its exclusive jurisdiction.

I think it would be a novel proposition for a private individual to come into the Federal Courts and seek to vindicate the jurisdiction of the National Labor Relations Board when such jurisdiction had not been assumed or claimed by the National Labor Relations Board. It is with some reluctance that I forbear any discussion on the merits of the case or on [fol. 134] the other two branches of the argument. But as I say, I have no desire to invade the province of the Common Pleas Court.

The application for a stay of proceedings will be denied.

Certificate

I certify that the above and foregoing is a true and correct transcript.

Robert J. Kitchen.

Defendants' Exhibit No. 10

In United States District Court

Order Denying Application for a Stay of Proceedings

Upon oral hearing and consideration of the plaintiffs' application to stay the defendant from proceeding in the Common Pleas Court of Cuyahoga County, Ohio, it is ordered that said application be denied.

It is further ordered that leave be granted the defendant to file a motion to dismiss instanter.

Charles J. McNamee, United States District Judge.

[fol. 135] In United States District Court

Findings of Fact and Conclusions of Law in Connection With the Court's Order Denying Motion for Preliminary Injunction — March 24, 1953

Findings of Fact

1. The plaintiffs in this case are Amalgamated Clothing Workers of America, a labor organization, and Cleveland Joint Board of Amalgamated Clothing Workers of America, a labor organization affiliated with Amalgamated Clothing Workers of America. The defendant is The Richman Brothers Company, an Ohio corporation engaged in the business of making and selling men's clothing and of making and buying other articles of men's wear, its main factory and principal office and place of business being located at 1600 East 55th Street, Cleveland, Ohio.

2. On October 18, 1952, the defendant in this case, The Richman Brothers Company, filed an action in the Common Pleas Court of Cuyahoga County, Ohio, entitled *The Richman Brothers Company, Plaintiff*, vs. *Amalgamated Clothing Workers of America, et al., Defendants*, No. 641,936 on the docket of that court, in which the plaintiffs in this case, with other labor organizations and individuals, were made defendants, and in which The Richman Brothers Company, as plaintiff, prayed, pending final hearing of the case, for a temporary restraining order restraining the defendants, and all persons to whom knowledge of such order should come, from picketing, and from doing any and all acts to encourage picketing of, any of plaintiff's stores, and that upon final hearing the injunction be made permanent. Defendant's Exhibit 7 is a copy of the petition in that case. [fol. 136] 3. On November 7, 1952, the defendants in Case No. 641,936 on the docket of the Common Pleas Court of Cuyahoga County, Ohio, previously herein referred to, removed the case to this Court on the ground that the action was based upon a law of the United States, namely, the Labor Management Relations Act, 1947, 29 U. S. C. § 141 et seq. Defendant's Exhibit 1 is a copy of the petition for removal of the case to this Court. It was docketed in this Court as Civil Action No. 29,671.

4. On November 14, 1952, the defendants filed their answer in that case, Defendant's Exhibit 7a herein.

5. Thereafter, The Richman Brothers Company, plaintiff in that case, filed a motion in this Court to remand the case to the Common Pleas Court of Cuyahoga County, of which Defendant's Exhibit 2 is a copy, and, after oral argument held on December 19, 1952, and after consideration of briefs filed in connection therewith, this Court on January 7, 1952, entered its order, of which Defendant's Exhibit 3a is a copy, remanding the case to the Common Pleas Court of Cuyahoga County and its memorandum in connection with such order of which Defendant's Exhibit 3 is a copy.

6. On January 8, 1953, the defendants in that case filed an application for rehearing and reconsideration, of which Defendant's Exhibit 4 is a copy, which was overruled by order of this Court, of which Defendant's Exhibit 5a is a copy, on January 22, 1953.

7. As alleged in the complaint in this case, on January 28, 1953, the plaintiffs in this case filed a motion in the Common Pleas Court of Cuyahoga County, Ohio, in case No. 641,936 in that court, for an order dismissing the [fol. 137] petition in that case and striking the petition from the files for the reason that the Common Pleas Court of Cuyahoga County, Ohio, "has no jurisdiction to hear or to determine the claim set forth in the plaintiff's petition in that all of the labor conduct allegedly involved is within the field occupied by the Labor Management Relations Act of 1947 (29 U. S. C. A. § 151 et seq.) (an act of the United States Congress), and is preempted from and closed to State regulation," of which Defendant's Exhibit 6 is a copy.

8. After consideration of briefs and oral argument addressed to this motion, on March 12, 1953, the Common Pleas Court of Cuyahoga County, Ohio, entered its order, a copy of which appears in Defendant's Exhibit 8, treating the defendant's motion to dismiss the petition in that court as a demurrer on the ground that the court lacked jurisdiction of the subject matter of the action and overruling the demurrer.

9. Thereafter, on March 16, 1953, the present action, Civil Action No. 30,096 on the docket of this Court, was filed by the plaintiffs herein, in which the plaintiffs seek

to enjoin the defendant from further proceeding in the action in the Common Pleas Court on the grounds enumerated in the complaint, and for other similar relief on the same theory.

10. On March 23, 1953, the case came on for hearing on the motion for a stay pending hearing of the plaintiff's motion for a preliminary injunction and this Court, after consideration of oral argument and briefs, on March 23, 1953, entered its order, of which Defendant's Exhibit 10 is a copy, denying the stay and permitting the defendant to file a motion to dismiss the case instanter.

[fol. 138] 11. By consent of counsel the case was set for hearing on the motion for a preliminary injunction on March 24, 1953, and after consideration of the evidence, all of which was submitted by the defendant, consisting of Defendant's Exhibits 1 through 10, inclusive, and arguments of counsel, this Court, on March 24, 1953, entered its order denying a preliminary injunction in this case.

Conclusions of Law

1. This Court is prohibited by Title 28, U. S. C. § 2283 from issuing a preliminary injunction as prayed for, because there is no act of Congress which expressly authorizes the Court to issue such an injunction, there is no judgment of this Court which would be protected or effectuated by such a preliminary injunction, and it is not necessary in aid of the jurisdiction of the Court.

2. Therefore, the plaintiffs are not entitled to a preliminary injunction as prayed for in their complaint.

Charles J. McNamee, Judge.

March 24, 1953.

[fols. 139-140] In United States District Court

Order Denying Motion of Plaintiffs for Preliminary Injunction—March 25, 1953

This cause came on to be heard on the motion of the plaintiffs for a preliminary injunction and was duly heard upon the evidence and submitted to the Court; and the Court, having considered the same, finds and concludes

upon the findings of fact and conclusions of law filed herewith, that the plaintiffs are not entitled to a preliminary injunction as prayed for in their complaint.

It is, therefore, ordered that the motion of the plaintiffs for a preliminary injunction herein be and the same is hereby denied.

Charles J. McNamee, Judge.

March 25, 1953.

[fol. 150-152] IN THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

JUDGMENT—Filed March 30, 1954

Appeal from the District Court of the United States for the Northern District of Ohio.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Northern District of Ohio, and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this Court that the motion to dismiss the appeal be and it is denied, and the order of the said District Court denying injunction is hereby affirmed.

[fol. 153] [File endorsement omitted]

In United States Court of Appeals for the Sixth Circuit

Amalgamated Clothing Workers of America and Cleveland Joint Board of the Amalgamated Clothing Workers of America, Appellants,

v.

The Richman Brothers Company, Appellee

No. 11893

Appeal from the United States District Court for the Northern District of Ohio, Eastern Division

Decided March 30, 1954

Opinion—Filed March 30, 1954

Before: Simons, Chief Judge; Allen and Miller, Circuit Judges.

Simons, Chief Judge. This appeal is from an order denying a motion for temporary injunction brought by appellants to enjoin appellee from proceeding in its suit before the Court of Common Pleas in Ohio. The ground for denial was that the court was without jurisdiction to entertain the suit because of the prohibition of 28 U. S. C. § 2283. The appellants' petition was based on the ground that the appellee's State court action constituted an invasion of the exclusive jurisdiction conferred by Congress upon the National Labor Relations Board. A motion to dismiss the appeal was referred by us to the oral hearing which has now been had. The appellant will be referred to herein as "the union" and the appellee as "Richman."

Richman is an Ohio corporation engaged in the manufacture and retail sale of wearing apparel in various states. The controversy was initiated by its suit in the State court for a temporary restraining order to prevent the union from picketing its stores, on the ground that the picketing was in furtherance of a conspiracy whose purpose was to exert economic pressure on Richman so that it would compel its

[fol. 154] employees to join the union. The suit was removed to the United States District Court, on the ground that the action was based upon an alleged unfair labor practice within the meaning of Section 8 (b)(1)(A) of the National Labor Relations Act. Richman moved to remand. The District Court granted its petition because it was, it said, without jurisdiction of the subject matter. The union filed, in the State court, a motion to dismiss on the ground that the matter complained of was within the exclusive jurisdiction of the National Labor Relations Board. Its motion was denied. The union then instituted an independent action in the District Court against Richman to enjoin it from prosecuting the remanded action and requested it to stay proceedings in the Ohio court pending determination of its application in the District Court for injunction. The court overruled the application for a stay and denied the granting of injunction. On the same day, hearings were begun in the State court resulting in the issuance of an injunction by the State court restraining the union from picketing the Richman stores. In the meanwhile, the union had noticed its appeal from the District Court's order.

Richman moved to dismiss the appeal on the ground that it constituted an attempt indirectly to obtain a review of the District Court's order of remand prohibited by Title 28 U. S. C. § 1447(d) which provides that such order "is not reviewable on appeal or otherwise." The union responds that the action is independent and in recognition of the finality of the remand order. This issue was not presented to or considered by the District Court which denied injunction solely on Title 28 § 2283. In view of what follows, we find no need for deciding it here.

There is also collaterally involved the question whether, under the facts as alleged in the Richman petition in the State court, Richman's grievance against the union is within the exclusive jurisdiction of the National Labor Relations Board, so that the State court is without jurisdiction to entertain it. In *Garner* v. *Teamsters, Chauffeurs, et al.*, 346 U. S. 485, decided December 14, 1953, it was held under comparable but not identical facts that the Supreme Court of Pennsylvania was right in dissolving an injunction against picketing issued out of a local court. It reasoned

that while the National Labor Management Relations Act leaves much to the states, Congress had refrained from saying how much. It said: "This is not an instance of injurious conduct which the National Labor Relations Board [fol. 155] is without express power to prevent and which therefore either is 'governable by the State or it is entirely ungoverned.' In such cases we have declined to find an implied exclusion of state powers. *International Union* v. *Wisconsin Board*, 336 U. S. 245, 254. Nor is this a case of mass picketing, threatening of employees, obstructing streets and highways, or picketing homes. We have held that the state still may exercise 'its historic powers over such traditionally local matters as public safety and order and the use of streets and highways.' *Allen-Bradley Local* v. *Wisconsin Board*, 315 U. S. 740, 749."

There is no suggestion in the Richman petition that violence or threats accompanied the union picketing. There is, however, an allegation of sporadic picketing demonstrations by as many as twenty pickets milling about in closely formed groups at the main entrance of the picketed stores, creating confusion and blocking the entrance so as to divert pedestrian traffic outwardly therefrom. Whether this distinction from the *Garner* case suggests an area for the exercise of State authority, we do not undertake to decide. The order of the State court granting the injunction is summary without findings of fact or conclusions of law and no record has been made available to us. We confine our consideration of the present case to the impact of Section 2283. That section provides: "A court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments."

It will be observed that § 2283 provides three exclusions from its operations: 1) the injunction must be expressly authorized by Act of Congress, 2) it must be necessary in aid of the court's jurisdiction, 3) it must be designed to protect or effectuate the court's judgment. The union does not cite an Act of Congress which *expressly* authorizes stay of proceedings in a State court by a federal court in this type of case. *Boales* v. *Willingham*, 321 U. S. 503 and *Porter, Price Administrator* v. *Dicken*, 328 U. S. 252 held

that § 205 of the Price Control Act authorizes the Price Administrator to seek injunctive relief in appropriate courts, because that section is impliedly an amendment to § 265 of the Judicial Code, 28 U. S. C. § 379 which was predecessor to § 2283, *supra*. It is pointed out that Section 10(j) of the Labor Act, Title 29 U. S. C. § 160 provides that the National Labor Relations Board shall have the power, [fol. 156] upon issuance of a complaint charging an unfair labor practice, to petition a district court of the United States for appropriate temporary relief or a restraining order and that upon the filing of such petition the court shall have jurisdiction to grant such temporary relief or restraining order as it deems just and proper. So, it is argued that this section is so analogous to § 205 of the Price Control Act that it, too, is impliedly an amendment to the statute prohibiting injunctions to stay proceedings in the State courts.

There are a number of reasons why this argument fails. Neither the Price Control Act nor the Labor Act permits the granting of an injunction to persons generally. The authority granted in the Price Control Act is limited to the Price Administrator and for specific purposes and the authority in the Labor Act is limited to the Labor Board, but only for temporary restraint pending final adjudication of the Board with respect to the matter involved. This, necessarily, involves a proceeding in which the jurisdiction of the Board has been invoked. Here, what was sought was a permanent injunction and the jurisdiction of the Labor Board had not been invoked. This is made clear by subsection (1) of Section 10. Finally, § 2283, *supra*, in so far as it provides that a court of the United States may not grant an injunction to stay proceedings in a State Court, except as expressly authorized by Act of Congress, was not enacted into law until June 25, 1948. The *Dickson* case was decided in 1946, and *Boadle* in 1944. It is suggested in the revisor's note in 28 U. S. C. § 2283 that the provision limiting authority to enjoin to authority expressly granted was for the purpose of avoiding the decision in *Toucey* v. *New York Life Insurance Company*, 314 U. S. 118, which held that a federal court is without power to enjoin relitigation of cases already adjudicated. Whatever may be said of this inference, the limitation in § 2283 is clear, manda-

tory and completely free of ambiguity. It does not call for construction.

But were construction permissible, courts should not lightly read into the prohibitory enactment an implied amendment. This, we think, is the teaching of the *Toucey* case. There, the court traced the history of the prohibitory statute from its initial enactment in 1793 and said of it, p. 132: "The purpose and direction underlying the provision are manifest from its terms: proceedings in the State courts should be free from interference by federal injunction. The provision expresses on its face the duty of [fol. 157] 'hands-off' by the Federal courts in the use of the injunction to stay litigation in a State court. . . . In the course of 150 years, Congress has made few withdrawals from this sweeping prohibition:".

Finally, the principle has bearing, that in order to maintain respect for the mandates of courts, an injunctional order must be obeyed even if error lies in an assumption of validity of a seeming but void law. It is for the court, in the first instance, to determine the question of validity and until its decision is reversed for error by orderly review, either by itself or by a higher court, orders based on its decision are to be respected. *Howat* v. *Kansas*, 107 Kan. 423, 109 Kan. 376. The reasoning of that case was approved in *Howat* v. *Kansas*, 258 U. S. 181, 189, wherein Mr. Chief Justice Taft, speaking for a unanimous court, said: "It is for the court of first instance to determine the question of the validity of the law, and until its decision is reversed for error by orderly review, either by itself or by a higher court, its orders based on its decision are to be respected." This reasoning was cited and approved recently in *United States* v. *United Mine Workers of America*, 330 U. S. 258, 293. We are advised that the injunction has now been issued by the State court. Neither the District Court nor this court is invested with general power to review the decisions of State courts. This case involving a federal question, the appropriate course was to test the merits of appellants' grievance by appeal to the court of last resort in the state and from there to the Supreme Court of the United States. This was the road which the *Garner* case took.

The appellants urge, however, that such course would

have made for delay and that time was important to them. How valid that is we are unable to say but the care which Federal courts have taken from earliest times to avoid conflicts with State courts might well have counseled taking the longer path.

We come then to the phrasing of § 2283 which permits restraint of State judicial action where necessary in aid of the jurisdiction or to protect or effectuate the judgment of the Federal court. The appellants urge that this exclusionary language is broad enough to vest in the District Court authority to enjoin State action, not only to protect its own jurisdiction but also the exclusive jurisdiction of a federal agency. At least, one court has so held. *NLRB* v. *New York State Labor Relations Board*, 106 Fed. Sup. 749, D. C. N. Y. In that case, however, the Board's jurisdiction had been invoked and it had power expressly vested in it [fol. 158] to bring an action in the District Court to enjoin a State Labor Relations Board from invading its exclusive jurisdiction pendente lite. In *Capital Service, Inc.* v. *National Labor Relations Board*, 204 Fed. (2d) 884 (9th Cir.), the Supreme Court granted certiorari upon this question submitted by the court: "In view of the fact that exclusive jurisdiction over the subject matter was in the National Labor Relations Board, *Garner* v. *Teamsters, Chauffeurs and Helpers, Local Union No. 776, (AFL), et al.*, No. 56, October Term 1953, decided December 14, 1953, could the Federal District Court, on application of the Board, enjoin petitioners from enforcing an injunction already obtained from the State court." Affirmative answer to that question will not conclusively decide this case for, there, there was an application by the Board itself to protect its jurisdiction, already invoked and pending decision. Here, no such situation exists.

In *Meyers* v. *Bethlehem Ship Building Corporation*, 303 U. S. 41, the question was whether a Federal District Court had equity jurisdiction to enjoin the National Labor Relations Board from holding a hearing on a complaint filed by it against an employer alleged to be engaged in unfair labor practice. The answer to that question was that the District Court had no such jurisdiction. It was pointed out that exclusive initial jurisdiction arising under the Labor Management Relations Act is vested in the Board

and the District Court has no jurisdiction to entertain actions based thereon or growing thereout. In the *Garner* case, *supra*, it was said: "The same reasoning which prohibits federal courts from intervening in such cases, except by way of review or on application of the Federal Board, precludes State courts from doing so," citing the *Meyers* case, *supra*, and *Amalgamated Utility Workers* v. *Consolidated Edison Company*, 309 U. S. 261. In a foot-note, it cites *International Union* v. *William D. Baker Company*, 100 Fed. Supp. 773, as illustrating the potentialities of conflict, and noting that the federal court in that case had held that even if exclusive jurisdiction over the subject matter was in the federal court, it had no power to enjoin enforcement of the State injunction. For critical comment on *Baker*, see note 48 N. W. U. L. Rev. 383.

Another explanation by the appellants for taking the course they did, rather than by orderly review, is based on the assertion that while Richman charged an unfair labor practice, the union had no basis for invoking the jurisdiction of the Labor Board and the Labor Board had consistently declined to undertake any proceeding [fol. 159] without a formal charge being lodged with it. But the Board has held in *W. T. Carter & Brother*, 90 N. L. R. B. No. 257, that the utilization of State judicial machinery for the purpose of blocking communication between union organizers and employees infringes organizational rights and is itself an unfair labor practice, over which it has jurisdiction. The union so charged in the *Carter* case and the Board, in its order, directed the employer to obtain vacation of the State court decree. (For comment on the *Carter* case, see 64 Harvard Law Rev. 507 [1951].) If time be of the essence, this approach could have settled at an early stage the question whether the Board would exercise its discretion to act, as well as other questions involved, and would have avoided the difficulties presented in the conflict of Federal and State jurisdiction. Perhaps, it is not too late to employ the mechanics of the *Carter* case. Upon this, we express no opinion.

Our conclusion is that § 2283, *supra*, did not vest in the court below jurisdiction over the union's petition for an injunction against State action, in the circumstances of

the present case. The motion to dismiss the appeal is denied but the order denying injunction is

Affirmed.

[fols. 160-161] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 162] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1954

No. 173

[Title omitted]

ORDER ALLOWING CERTIORARI—Filed October 14, 1954

The petition herein for a writ of certiorari to the United States Court of Appeals for the Sixth Circuit is granted, and the case is transferred to the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

SUPREME COURT, U.S.

Office - Supreme Court, U. S.
JUN 28 1954
HAROLD B. WILLEY, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1954

No. 173

AMALGAMATED CLOTHING WORKERS OF AMERICA and CLEVELAND JOINT BOARD OF THE AMALGAMATED CLOTHING WORKERS OF AMERICA,

Petitioners,

v.

THE RICHMAN BROTHERS COMPANY,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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PETITION FOR WRIT OF CERTIORARI

Opinions Below

The District Court's findings of fact and conclusions of law on the denial of petitioners' prayer for a preliminary injunction appear in the Record at page 135a. The District Court's opinion on the denial of petitioners' motion for a stay pending disposition of the prayer for a preliminary injunction appears in

the Record at page 143a,[1] the opinion has not been officially reported.

The opinion of the Court of Appeals is reported at 211 F. 2nd 449.

Jurisdiction

The judgment of the Court of Appeals was entered on March 30, 1954 (R. 151a). The jurisdiction of this Court to review that judgment is based upon 28 U. S. C. (Supp. V) 1254(1).

Question Presented

When an employer seeks to enjoin union conduct in a state court which lacks jurisdiction because the conduct complained of is subject to the exclusive jurisdiction of the National Labor Relations Board (*Garner* v. *Teamsters Union*, 346 U. S. 485), is a federal District Court, on application of the union, powerless to enjoin the employer from further pursuing such action and attempting to obtain and enforce a state court injunction?[2]

[1] References to the Record hereafter appear as "R. ".

[2] Both the District Court and the Court of Appeals, confining themselves to a consideration of the impact of section 2283 of the Judicial Code, 28 U. S. C. (Supp. V) 2283, concluded that the District Court was without power to enjoin the state court proceedings. The Court of Appeals observed, however, that there is a collateral question "whether, under the facts as alleged in the Richman petition in the state court, Richman's grievance against the union is within the exclusive jurisdiction of the National Labor Relations Board, so that the State court is without jurisdiction to entertain it." (211 F. 2nd at 450). As hereinafter indicated, the rule in *Garner* v. *Teamsters Union*, 346 U. S. 485, requires an affirmative answer. See *infra*, pp. 6-9.

Statute Involved

Section 2283 of the Judicial Code (28 U. S. C. (Supp. V) 2283) provides as follows:

> "A court of the United States may not grant an injunction to stay proceedings in a state court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments."

Statement

Petitioners herein, both unincorporated associations, are labor organizations—the Amalgamated Clothing Workers of America and the Amalgamated's Cleveland Joint Board, a regional grouping of constituent locals of the parent union (R. 5a-6a). (Petitioners are hereinafter referred to as "Amalgamated".) Respondent, The Richman Brothers Company (hereinafter referred to to as "Richman"), is an Ohio corporation which manufactures men's clothing in Ohio and Kentucky and sells such clothing at retail in its self-owned stores located in sixteen states (R. 4a).

The instant case arose out of Amalgamated's attempt to organize Richman's manufacturing employees. As a part of this campaign Amalgamated sought to inform the consuming public of the fact that Richman's products are non-union through the media of press, radio, meetings, sound-trucks and leaflets, and, starting in March 1951, through pickets bearing signs at Richman's retail outlets.

On October 18, 1952, Richman instituted an action in the Ohio Court of Common Pleas of Cuyahoga County seeking an injunction restraining Amalgamated from picketing Richman's own retail outlets in all sixteen states including Ohio. It was the gist of Richman's petition in the state court that Amalgamated was "engaged . . . in carrying forward a conspiracy to cause economic pressure to be directed against plaintiff with the intention and for the purpose and objective of thereby causing plaintiff to force sufficient of its eligible employees to become members of defendant Amalgamated, so that defendant Amalgamated may become the representative of its such employees for the purpose of collective bargaining with plaintiff, regardless of the desires of a majority thereof" (R. 8a). The petition was limited solely to a request for injunctive relief.

Amalgamated removed Richman's suit to the United States District Court for the Northern District of Ohio on the ground that the allegations on which Richman's state court action was based constituted charges of unfair labor practices by Amalgamated within the meaning of the National Labor Relations Act (61 Stat. 136, 29 U. S. C. (Supp. V) 151, *et seq.*).

Richman moved to remand the case to the state court. On January 7, 1953 District Judge McNamee remanded the case. Judge McNamee held that, even assuming Richman's petition stated an unfair labor practice within the meaning of the National Labor Relations Act, such a charge was outside the original jurisdiction of the District Court (R. 75a).

Petitioners subsequently moved the state court to dismiss Richman's action on the ground that the ac-

tion was exclusively within the purview of the National Labor Relations Board and that the state court was therefore without jurisdiction. This motion was denied (R. 123a).

Thereafter, petitioners promptly instituted the present proceeding in the federal District Court, asking that court to enjoin Richman from further prosecution of its state court action on the ground that Richman's petition complained of matters within the exclusive jurisdiction of the National Labor Relations Board and that the state court was therefore without jurisdiction (R. 124a).

The District Court denied Amalgamated's application for a stay of the state court proceeding pending disposition of Amalgamated's prayer for a preliminary injunction (R. 131a). The court, in an oral opinion delivered on the denial of the stay, held that it was without power to grant the injunctive relief requested by virtue of the provisions of Section 2283 of the Judicial Code. Judge McNamee restated this view in findings of fact and conclusions of law filed the next day in conjunction with the court's order denying the motion for a preliminary injunction (R. 135a).

Immediately following Judge McNamee's order, hearings were initiated in the state court leading to the issuance by that court of a sweeping temporary injunction—still in effect—prohibiting Amalgamated from picketing Richman's retail stores in each of the sixteen states in which the stores are located.

From Judge McNamee's order denying a temporary injunction Amalgamated appealed to the Court of

Appeals for the Sixth Circuit. The Court of Appeals affirmed the conclusion of the District Court that Section 2283 deprived the District Court of power to grant the requested injunctive relief (R. 151a, 153a).

The opinion and the order of affirmance were filed on March 30, 1954 (R. 151a-152a). It is to review this order of affirmance that petitioners herein request this Court to issue its writ of certiorari.

Specification of Errors to Be Urged

The Court of Appeals erred in:

(1) Failing to hold that the state court was without jurisdiction;

(2) Holding that the District Court was without power to enjoin respondent from pursuing its state court action;

(3) Affirming the District Court's denial of the temporary injunction sought by petitioners.

Reasons for Granting the Writ

I

As heretofore noted the Court of Appeals expressly by-passed a determination of the impact of *Garner* v. *Teamsters Union*, 346 U. S. 485, on the instant case, by limiting its consideration to the effect of Section 2283. (See p. 2, note 2, *supra*.) Petitioners submit that application of the *Garner* rule to the instant facts requires the conclusion that Richman "could have presented this grievance to the National

Labor Relations Board", and that, therefore, "the grievance was not subject to litigation in the tribunals of the State" (345 U. S. at 501).

In *Garner*, the Court considered the validity of a state court injunction against organizational picketing of the premises of an employer engaged in interstate commerce where the purpose of the picketing —indistinguishable from the purpose alleged by Richman in the instant case[3]—was to "coerce [the employer] into compelling or influencing . . . employees to join the Union" (346 U. S. at 487). Without attempting to pass definitive judgment on the facts there alleged or the legal consequences flowing therefrom, the Court concluded that allegations of such a character appeared to raise questions under the National Labor Relations Act, wherein Congress had "forbidden labor unions to exert certain types of coercion on employees through the medium of the employer" (346 U. S. at 488-489).[4] The Court found

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[3] The purpose alleged is one which petitioners must and do accept for purposes of testing the state court's jurisdiction, but it is without foundation in fact. Amalgamated's picketing was part of a campaign of peaceful persuasion—apprising the public of Richman's non-union status and urging the public to refrain from purchasing Richman's products. The late Senator Taft stated unequivocally that such union conduct does not violate the National Labor Relations Act. 93 Cong. Rec. A3370 (80th Cong., 1st Sess., 1947).

[4] In the *Garner* opinion, this Court emphasized the view that the alleged coercion might be regarded as an unfair practice charge against the union under Section 8 (b) (2) of the Act, which provides:

> "It shall be an unfair labor practice for a labor organization or its agents . . . (2) to cause or attempt to cause an employer to discriminate against an employee in violation of subsection (a) (3) of this section or to discriminate against an employee with respect to whom membership in such organization has been denied or terminated on some ground other than his failure to tender the periodic dues

that the Congressional scheme embodied in the National Labor Relations Act envisaged disposition of such matters, in the first instance, by the NLRB and by no other tribunal: Whether the picketing complained of was unlawful, or whether it was of a character which Congress sought to leave "free . . . of restraint" (346 U. S. at 499),[3] was a matter re-

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and the initiation fees uniformly required as a condition of acquiring or retaining membership" (29 U. S. C. (Supp. V) 158(b)(2)).

Subsection (a)(3) of Section 8 provides:

"It shall be an unfair labor practice for an employer . . . (3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization . . ." (29 U. S. C. (Supp. V) 158(a)(3)).

Coercion of the character here alleged might also be viewed as a violation of Section 8(b)(1) of the Act—direct restraint by a labor organization upon the exercise of employee rights protected by Section 7. Section 8(b)(1)(A) provides that:

"It shall be an unfair labor practice for a labor organization or its agents . . . (1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in Section 7 . . ." (29 U. S. C. (Supp. V) 158(b)(1)(A)).

Section 7 in turn reads:

"Employees shall have the right to self organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8(a)(3)" (29 U. S. C. (Supp. V) 157).

See Capital Service v. *NLRB*, 204 F. 2nd 848, 852-853 (C. A. 9, 1953), *affirmed*, 74 S. Ct. 699; *Direct Transit Lines* v. *Local Union No. 106*, 199 F. 2nd 89, 90 (C. A. 6, 1952).

[3] This Court did not, in the *Garner* opinion, have occasion to explore the differences between conduct expressly protected by Section 7 and conduct which, while neither protected by Section 7 nor proscribed by Section 8, is nevertheless within the area preempted by the National Labor Relations Act and therefore closed to the states.

specting which the "power and duty of primary decision lies with the Board . . ." (346 U. S. at 489).

Since "respondents were subject to being summoned before that body to justify their conduct . . . the grievance was not subject to litigation in the tribunals of the State" (346 U. S. at 501).[6]

II

The issue confronting this Court on the instant record is essentially one of remedy: assuming juris-

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[6] The Court of Appeals expressly found that, "There is no suggestion in the Richman petition that violence or threats accompanied the union picketing" (211 F. 2nd at 451). Judge McNamee, in the court of first instance, had observed that, "There is no allegation of fraud or violence in connection with the picketing and it is not fairly to be inferred that the picketing is other than peaceful" (R. 77a). In view of these clear statements by both the courts below, little weight can be attached to the Court of Appeals' reference to Richman's "allegation of sporadic picketing demonstrations by as many as twenty pickets" and the court's abbreviated speculation "whether this allegation suggests an area of state authority" (211 F. 2nd at 451). Such an allegation, balanced against these concurrent findings that the picketing in question was not alleged to be other than peaceful, cannot rise to the dignity of activity which was subject to state power because it "threatened a probable breach of the state's peace or would call for extraordinary police measures by state or city authority" (*Garner* v. *Teamsters Union*, 346 U. S. 485, 488).

Even assuming "sporadic picketing . . . by . . . twenty pickets" were subject to state authority, this of course would not warrant state judicial interference with other conduct exclusively reserved to the National Labor Relations Board. This precise distinction was very recently drawn by the New Jersey Supreme Court in *Busch & Sons* v. *Retail Union of N. J., Local 108*, 15 N. J. 226. There the court upheld an injunction against disorderly but—on the authority of *Garner*—reversed a subsequent injunction against all picketing where such picketing was alleged, *inter alia*, to be designed to force "the plaintiff, in violation of the Taft-Hartley Law, to coerce its employees to join the union".

diction over the subject matter is in the National Labor Relations Board to the exclusion of the courts of Ohio, is a District Court, on application of petitioners, powerless to restrain Richman from pursuing a state court action and securing a state court decree which invades the exclusive domain of the National Labor Relations Board and wrongfully restrains petitioners? The problem posed is one of power to act, not of jurisdiction. The District Court's jurisdiction arises under 28 U. S. C. (Supp. V) 1337, conferring original jurisdiction over civil actions arising under laws regulating commerce (*Capital Service* v. *NLRB*, 74 S. Ct. 699; *AFL* v. *Watson*, 327 U. S. 582, 591). (See also the "all writs" section, 28 U. S. C. (Supp. V) 1651(a).)

It is submitted that the decision of the Court of Appeals holding the District Court powerless to restrain maintenance of the state court action (1) is in probable conflict with the applicable decisions of this Court and inferior federal courts, and (2) poses a serious threat to the uniform administration of an integrated federal labor policy throughout the United States.

(1) Probable Conflict with Applicable Decisions

(a) *Section 2283 is inapplicable.*

Legally and philosophically, Section 2283 has been and should continue to be understood as playing no role whatsoever in a situation in which, by hypothesis, federal jurisdiction over a given subject matter is exclusive and consequently the exercise of state power is invalid.

Section 2283 is the 1948 revision of Section 265 of the Judicial Code.[7] Section 265 on its face barred all injunctions against state court proceedings with the single exception of "cases where such injunction may be authorized by any law relating to proceedings in bankruptcy". Notwithstanding the apparent breadth of this language, federal courts through the years recognized that the statutory provision did not operate in many important areas of federal-state conflict. See *Toucey* v. *N. Y. Life Ins. Co.*, 314 U. S. 118.[8] The key to interpretation of Section 265 was this Court's recognition that "it is intended to give effect to a familiar rule of comity and like that rule is limited in its field of operation. Within that field it tends to prevent unseemly interference with the orderly disposal of litigation in the state courts and is salutary; but to carry it beyond that field would materially hamper the federal courts in the discharge of duties otherwise plainly cast upon them by the Constitution and the laws of Congress, which of course is not contemplated" (*Wells Fargo & Co.* v. *Taylor*, 254 U. S. 175, 183). Rules of comity are designed to minimize friction between competing sovereignties which have concurrent jurisdiction. A statutory rule of comity like this "is designed to be in accord with, and not antagonistic to, our dual system of courts". *Ibid.* See *Moore, Commentary on the*

[7] Section 265 (codified as 28 U. S. C. 379) in turn derived from earlier statutory formulations, the first of which was 1 Stat. 335 ("... nor shall a writ of injunction be granted to stay proceedings in any court of a state"). The history of Section 265 and its predecessors is explored at some length in the opinions in *Toucey* v. *N. Y. Life Ins. Co.*, 314 U. S. 118.

[8] The *Toucey* decision extended the scope of Section 265's ban on injunctions against state court proceedings. As the Revisor's Note observes, however, Section 2283 "restores the basic law as generally understood and interpreted prior to the *Toucey* decision" (1 U. S. Code (Supp. V) p. 1767).

United States Judicial Code (1949) p. 407. Where, as in the instant case, only the federal system has authority, considerations of comity and statutory provisions like Section 2283 embodying those considerations have no application.

This proposition is clearly set forth in this Court's decision in *Bowles* v. *Willingham*, 321 U. S. 503. There the problem was whether the District Court had power to enjoin prosecution of an action in the Georgia state courts to restrain certain allegedly unconstitutional orders of the OPA Administrator. The Supreme Court found two independent bases for the challenged power: One was language in the Price Control Act held to be a *pro tanto* repeal of Section 265. The second rested on the fact that Congress had established a special Emergency Court of Appeals to adjudicate all attempts to restrain orders of the Administrator. Thus the Court expressly held:

> "Congress thus preempted jurisdiction in favor of the Emergency Court to the exclusion of state courts. The rule expressed in Sec. 265 which is designed to avoid collisions between state and federal authorities (*Toucey* v. *N. Y. Life Ins. Co., supra*) thus does not come into play" (321 U. S. at 511).

This Court has not had occasion squarely to decide whether the quoted holding in *Bowles* v. *Willingham* governs Section 2283—whether, in other words, Section 2283, like Section 265, is inapplicable in cases of exclusive federal jurisdiction.[9] The logic of the

[9] *See Capital Service* v. *NLRB*, 74 S. Ct. 699 (May 17, 1954) discussed *infra*, p. 14, in which this Court held that a District Court could enjoin enforcement of a state court injunction invading the N. L. R. B.'s jurisdiction, on the ground that

statutory provision, together with the close substantive identity between Section 2283 and its predecessor,[10] argues strongly for the same construction.

(b) *Alternatively, an express exception to Section 2283 permits the issuance of the requested injunction.*

For the reasons stated, petitioners submit that Section 2283 is wholly inapplicable to a case involving state court invasion of exclusive federal jurisdiction. Alternatively, however, it is submitted that, if applicable, the provision does not govern the instant case because of an express statutory exception. Section 2283 excepts from its limitation on federal equity power situations in which a District Court issues injunctions "necessary in aid of its jurisdiction".

The "jurisdiction" which federal courts can protect consistently with Section 2283 has been interpreted to comprehend the federal jurisdiction generally. Thus Judge Bondy pointed out in *NLRB* v. *N. Y. State Labor Relations Board*, 106 F. Supp. 749, 752 (S. D. N. Y. 1952), that Section 2283 "does not prevent the federal courts from restraining interference by the state courts with jurisdiction vested exclusively in the federal courts . . . or in a federal agency".

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the District Court in that instance was acting "in aid of its jurisdiction" within the meaning of that express exception to Section 2283. This Court, by way of footnote, there observed that, "In view of our ruling, we find it unnecessary to consider whether apart from the specific exceptions contained in 2283, the District Court was justified in enjoining this intrusion on an exclusive federal jurisdiction. *Cf. Bowles* v. *Willingham*, 321 U. S. 503, 510-511" (74 S. Ct. at 702, n. 2).

[10] See note 8, *supra*.

Turning to the instant case, it is clear that here as "[i]n the *Garner* case, Congress had provided a federal administrative remedy, supplemented by judicial procedure for its enforcement, with which the state injunctive procedure conflicted". *United Construction Workers* v. *Laburnum*, 22 U. S. L. Week 4289, 4291 (U. S., June 7, 1954). Under Judge Bondy's rationale, which petitioners submit is a correct one, it would appear appropriate for a District Court to enjoin state court interference with operations of a federal agency for which it has no direct responsibility. It would seem all the more appropriate for a District Court to act "in aid of its jurisdiction" where, as with the operations of the NLRB, the District Court has been granted concrete and affirmative jurisdiction to assist a federal agency in the effectuation of a statutory mandate. (See the authority conferred on the District Court by Sections 10(j) and 10(l) of the National Labor Relations Act.)

Illustrative of the power of the District Court to act "in aid of its jurisdiction" in order to protect federal labor policy, as exercised by the federal Board and the federal courts, against state interference, is *Capital Service* v. *NLRB*, 74 S. Ct. 699.

In that case a union, attempting to organize the employees of a manufacturer of bakery products, sought to enlist the aid of purchasers and consumers of the bakery and picketed those retail stores which refused to discontinue handling the bakery products. The bakery thereupon initiated a state court injunction proceeding and also filed charges of unfair labor practices with the National Labor Relations Board. The state court thereupon issued a preliminary in-

junction against the union banning all picketing of the retail stores. The National Labor Relations Board, however, deeming the union appeal to customers to be lawful under the National Labor Relations Act, issued a complaint limited to that part of the union's activities which induced or encouraged employees of employers other than the bakery to refuse to perform services at the picketed stores. The Board thereupon petitioned the federal District Court for an injunction restraining such conduct of the union pending final adjudication of the complaint by the Board. At the same time the Board petitioned the District Court to enjoin the bakery from enforcing the state court injunction. The requested injunction staying the state court proceeding was granted by the District Court and upheld by the Court of Appeals for the Ninth Circuit. This Court, which handed down its opinion in *Capital Service* on May 17, 1954, some six weeks after the decision of the Court of Appeals for the Sixth Circuit in the instant case, concluded "that the injunction issued by the District Court was 'necessary in aid of its jurisdiction' and thus permitted under the exceptions specifically allowed by Congress" (74 S. Ct. at 702). There, as here, the appropriate federal procedures for inquiry into and restraint of alleged unfair labor practices could not be freely and fully exercised unless the federal District Court could "first remove the state decree" (74 S. Ct. at 703).

No valid distinction can be made, as suggested by the Court of Appeals in the opinion below, between the instant case and cases like *Capital Service* and *NLRB* v. *N. Y. State Labor Relations Board*, where the jurisdiction of the federal Board had been invoked and the Board sought to restrain the state

court action. A distinction of this kind would sterilize the *Capital Service* rule, since employers hereafter would immunize themselves from District Court restraint upon invalid state decrees by avoiding the filing of charges with the single appropriate tribunal —the NLRB. Moreover, the fact that the jurisdiction of the Board, which cannot initiate charges on its own motion, has not yet been invoked, does not mean that the state court has any transient jurisdiction pending the invocation of the Board's processes. *Garner* itself is authority for the proposition that the state court is without jurisdiction *ab initio* without respect to the pendency of proceedings before the Board, and it is authority for the further proposition that the union enjoined by the state court has standing to complain of the state court's violation of the federal domain. Thus, there would appear to be no policy reason for distinguishing between the challenge of a federal agency and the challenge of a labor union to state court usurpation of power.

(2) The Impact of the Decision Below

The decision below, if allowed to stand undisturbed will mean that the route followed in *Garner*—appeal through the state courts and certiorari in this Court—would be the only procedural method open to a union to assert its federal right to be free of state court restraints upon activity exclusively regulated by the National Labor Relations Act.[11]

[11] There is a suggestion in the opinion of the Court of Appeals that petitioners might have been able to force an NLRB determination of the propriety of petitioners' concerted activity —notwithstanding respondent's unwillingness to take its charges before that clearly appropriate tribunal—by charging respondent with an unfair practice in seeking a state court restraint on

Such a limitation would, in substance, insulate invalid state court restraints from immediate assertion of the superior federal right and would undermine the federal government's exclusive authority over labor policy affecting interstate commerce. This Court's careful demarcation of the area in which state courts are to be permitted to act would be obscured. Moreover, since unions must on pain of contempt obey injunctions issued by courts wholly lacking in jurisdiction (*United States* v. *United Mine Workers*, 330 U. S. 258, 293-295), it is of paramount importance that unions be able to make prompt and effective challenge to state labor injunctions which, notwithstanding their illegality, can irrevocably alter the outcome of a controversy.

Beyond the problem of injury done to a union deprived of prompt redress, there is the fact that

legitimate organizational activity. The Court of Appeals' suggestion is based on the Board's conclusion in *W. T. Carter & Bros.*, 90 NLRB 2020, 2024, that an employer is guilty of an unfair practice in securing injunctions "in bad faith". According to *Carter*, "bad faith" invocation of judicial remedies by employers means that they resort "to court for the purpose of preventing their employees from exercising their rights under the Act, rather than for the purpose of advancing any legitimate interest of their own". *Ibid.* Petitioners submit that relief from an invalid state injunction cannot be made to turn upon prior proof of a proposition which in the nature of things could only be the subject of testimonial demonstration in the rarest of circumstances—*i. e.*, that the injunction complained of was secured for bad motives. (For a recent refusal of the NLRB to entertain unfair practice charges against the securing of a state court restraint, absent a showing of "bad faith", see *Administration Decision of the General Counsel*, Case No. 918, April 15, 1954). It is the injunction, not the employer's underlying motive, which usurps federal authority and thereby injures the union. Moreover, it should be noted that even the narrow *Carter* rule has application only where the state court decree interferes with union activity *protected* by the National Labor Relations Act. It can have no application where the union activity complained of is *proscribed* by the Act.

the decision of the Court of Appeals in the instant case encourages endless multiplicity of interpretation and enforcement of federal labor policy by state tribunals wholly without jurisdiction over the subject matter. In case after case, if prompt intervention by District Courts is barred, state courts wholly unacquainted with the National Labor Relations Act will be asked to make profoundly important and intricate determinations as to whether conduct is "prohibited", "protected", or "unregulated".

Finally, at a time when state court injunctions are again being issued with alarming frequency, this Court will be confronted with the dilemma of either constantly adjudicating issues which, by hypothesis, should have been tried out before the National Labor Relations Board or of denying certiorari and thus depriving working-men of the effective exercise of fundamental federal rights.

CONCLUSION

For the foregoing reasons, petitioners urge this Court to issue its writ of certiorari to review the judgment below.

Respectfully submitted,

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SUPREME COURT, U.S.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1954

No. 173

AMALGAMATED CLOTHING WORKERS OF AMERICA and CLEVELAND JOINT BOARD OF THE AMALGAMATED CLOTHING WORKERS OF AMERICA,

Petitioners,

v.

THE RICHMAN BROTHERS COMPANY,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR PETITIONERS

Opinions Below

The opinion of the Court of Appeals (R. 29-36) is reported at 211 F. 2nd 449. The findings of fact and conclusions of law of the District Court (R. 25-27) and the opinion of the District Court (R. 22-24) are not officially reported.

Jurisdiction

The judgment of the Court of Appeals was entered on March 30, 1954 (R. 28). The Petition for a Writ

of Certiorari was filed on June 28, 1954, and the writ was granted on October 14, 1954 (R. 36). The jurisdiction of this Court is based upon 28 U. S. C. 1254(1).

Question Presented

When an employer seeks to enjoin union conduct in a state court which lacks jurisdiction because the conduct complained of is subject to the exclusive jurisdiction of the National Labor Relations Board (*Garner* v. *Teamsters Union*, 346 U. S. 485), is a federal district court, on application of the union, powerless to enjoin the employer from further pursuing such action and attempting to obtain and enforce a state court injunction?

Statutes Involved

Sections 1337, 1651(a) and 2283 of the Judicial Code (28 U. S. C. 1337, 1651(a) and 2283), together with the relevant provisions of the National Labor Relations Act, as amended (29 U. S. C. 151 *et seq.*), are set forth in the Appendix, *infra*, pp. 43-49.

Statement

The Underlying Facts

Petitioners (hereinafter collectively referred to as "Amalgamated") are labor unions—the Amalgamated Clothing Workers of America and the Cleveland Joint Board, an affiliate of the Amalgamated composed of constituent locals of the Amalgamated in and about Cleveland, Ohio. Respondent, The Richman Brothers

Company (hereinafter referred to as "Richman") is an Ohio corporation, with its main office and place of business in Cleveland, which manufactures men's clothing in Ohio and Kentucky and sells such clothing at retail in its own outlets (R. 3, 17). Of these retail outlets, three are in Cleveland, 15 are in fourteen other cities in Ohio, and 51 are in thirty-one cities in fifteen other states of the United States (R. 3, 17). Respondent employs approximately 1500 manufacturing employees (R. 4, 17).[1]

The instant case arises out of Amalgamated's attempt to organize Richman's manufacturing employees (R. 17-18). As a part of this campaign, Amalgamated, beginning in 1951, sought to inform the consuming public of the fact that Richman's products were non-union. For this purpose, Amalgamated utilized the media of press, radio, meetings, sound-trucks and leaflets and also peacefully picketed Richman's retail outlets with signs generally bearing the following truthful and unprovocative legends (R. 7, 18):

> Richman Clothes are not union made. Buy union made clothing.
>
> Richman Clothes do not have a union label. Buy clothes which have a union label.

In October, 1952, Richman countered by instituting an action in the Ohio Court of Common Pleas for Cuyahoga County seeking an injunction restraining Amalgamated from picketing Richman's retail outlets in Ohio and in the fifteen other states in which

[1] On these facts, the union activities hereafter described have, as Richman has at no time disputed, a sufficient impact on interstate commerce to be subject to the Board's jurisdiction.

they are located (R. 1-10). It was the gist of Richman's petition that Amalgamated was "engaged . . . in carrying forward a conspiracy to cause economic pressure to be directed against plaintiff with the intention and for the purpose and objective of thereby causing plaintiff to force sufficient of its eligible employees to become members of defendant Amalgamated, so that defendant Amalgamated may become the representative of its such employees for the purpose of collective bargaining with plaintiff, regardless of the desires of a majority thereof" (R. 6). The petition was limited solely to a request for injunctive relief (R. 8-9, 10).

Amalgamated removed Richman's suit to the United States District Court for the Northern District of Ohio on the ground that Richman's state court action was, in reality, a controversy arising under the National Labor Relations Act, as amended (R. 25). On Richman's motion, the District Court remanded the case to the state court, holding that, even were it assumed that Richman's petition alleged an unfair labor practice within the meaning of the National Labor Relations Act, such a charge was outside the original jurisdiction of the District Court. *Richman Bros. Co. v. Amalgamated Clothing Wkrs.*, 114 F. Supp. 185, rehearing denied, 116 F. Supp. 800.

Petitioners' subsequent motion in the state court to dismiss Richman's action on the ground that it was within the exclusive purview of the National Labor Relations Board was denied (R. 15-16).

The Instant Proceeding

Thereafter, petitioners at once instituted the present proceeding in the federal District Court, asking that court to enjoin Richman from further prosecution of its state court action on the ground that Richman's petition complained of matters within the exclusive jurisdiction of the National Labor Relations Board and that the state court was therefore without jurisdiction (R. 16-21). More particularly, the complaint alleged that the activities in which Amalgamated was engaged were affirmatively protected by Section 7 of the National Labor Relations Act; but that if Amalgamated's activities had been for the purpose alleged by Richman . . 's state court petition such activities would have either been prohibited by Section 8 of the Act, or, if not prohibited, nevertheless within the area preempted by the Act and subject to the exclusive jurisdiction of the National Labor Relations Board, and hence beyond the jurisdiction of the state court (R. 19).

The District Court, first denying Amalgamated's application for a stay of the state court proceeding pending disposition of Amalgamated's prayer for a preliminary injunction (R. 24) and then denying the preliminary injunction (R. 27-28), held that it was prohibited from granting the requested injunctive relief by virtue of the provisions of Section 2283 of the Judicial Code, limiting the issuance by district courts of injunctions against state court proceedings (R. 22-24, 25-27). The District Court decided only one issue, the impact of Section 2283.

On appeal, the Court of Appeals for the Sixth Circuit affirmed (R. 28, 29-36). The appellate court like-

wise decided no issue other than that relating to Section 2283. It is the Court of Appeals' order of affirmance which is before this Court pursuant to its order granting certiorari (R. 36).

Throughout the appellate phases of this litigation, Amalgamated has been prohibited by a sweeping temporary injunction, still in effect, from picketing Richman's 69 retail outlets in all of the sixteen states in which they are located. This injunction was issued by the Cuyahoga County Court of Common Pleas following hearings initiated the very day the District Court denied Amalgamated's motion for a preliminary injunction. *Richman Bros. Co.* v. *Clothing Workers*, 51 Ohio Ops. 145.

Summary of Argument

A. The question presented by petitioners in the Petition for Certiorari and in this Brief assumes as its premise that the Ohio court was without jurisdiction of Richman's action under the rule announced in *Garner* v. *Teamsters Union*, 346 U. S. 485. This assumption is fully warranted.

Here, as in the *Garner* case, an employer sought a state court injunction against peaceful picketing allegedly designed to coerce the employer into forcing his employees to join the union (R. 6, 18). Here, as in *Garner*, the subject matter of the controversy fell exclusively within the area preempted by the National Labor Relations Act, the employer could have presented the controversy to the National Labor Relations Board, and hence the controversy "was not subject to litigation in the tribunals of the State" (346 U. S. at 501).

B. Section 1337 of the Judicial Code confers upon the several district courts jurisdiction over "any civil action or proceeding arising under any Act of Congress regulating commerce . . ." 28 U. S. C. 1337. The complaint initiating the instant proceeding alleged that respondent's state court action threatened rights secured to petitioners by the National Labor Relations Act, an act "regulating commerce". The jurisdiction of the District Court to hear the instant case and grant injunctive relief is confirmed by *A. F. of L.* v. *Watson*, 327 U. S. 582, and *Capital Service, Inc.* v. *Labor Board*, 347 U. S. 501, both of which expressly upheld district court jurisdiction over suits to enjoin state action jeopardizing rights arising under the National Labor Relations Act.

Whether the plaintiff is a federal instrumentality or a private party is irrelevant to the court's jurisdiction. The federal courts have taken jurisdiction of suits to enjoin state invasion of the area preempted by the National Labor Relations Act where such suits have been brought by the National Labor Relations Board, *Capital Service, Inc.* v. *Labor Board, supra; National Labor Rel. Bd.* v. *New York State Labor Rel. Bd.*, 106 F. Supp. 749 (S. D. N. Y.), and *National Labor Relations Board* v. *Industrial Com'n*, 84 F. Supp. 593 (D. Utah), affirmed 172 F. 2nd 389 (C. A. 10); by a union, *Food, Tobacco, Agricultural and Allied Wkrs.* v. *Smiley*, 164 F. 2nd 922 (C. A. 3), and *United Office and Professional Wkrs.* v. *Smiley*, 77 F. Supp. 659 (M. D. Pa.); by an employer, *Linde Air Products Co.* v. *Johnson*, 77 F. Supp. 656 (D. Minn.); and by unions, employees and employers together, *A. F. of L.* v. *Watson, supra*.

C. (1) To conclude, as is required by the opinion below, that district courts are prohibited from granting injunctions to restrain state court actions invading the field preempted by the National Labor Relations Act, would have "deplorable" consequences. Frank *J.*, in *International Union* v. *Underwood Corp.* (C. A. 2, No. 182, January 6, 1955) page 279 n. 14. The picketing here complained of gave rise to a controversy within the exclusive federal domain, where uniformity of interpretation and administration is essential. But the rule announced by the court below would make union activity subject to divergent and invalid restraints by state courts which, like the Cuyahoga County Court, could thus effectively assume judicial power over much of the nation. In the vast majority of cases, the lengthy *Garner* path through tiers of state courts, all without jurisdiction, to this Court, would be an illusory remedy; state court injunctions (which would have to be complied with notwithstanding the fact that they were "void", *United States* v. *Mine Workers*, 330 U. S. 258), would stand as insurmountable obstacles to union activity. In labor disputes, "the preliminary proceedings . . . make the issue of final relief a nullity." Frankfurter and Greene, *The Labor Injunction* (1930) 200. In the few cases where unions could survive years of litigation to gain "final relief" through this Court's ultimate intervention on certiorari, such final relief could not prevent obliteration, by improvident state court decrees, of the policies entrusted by Congress exclusively to the Board and the federal courts.

Section 2283 of the Judicial Code, relied on by the court below, is not a bar to the requested relief. Section 2283 is not a jurisdictional statute (*Smith* v.

Apple, 264 U. S. 274, 278-280; *Woodmen of the World* v. *O'Neill*, 266 U. S. 292, 298), but a flexible limitation on federal equity powers which is here inapplicable:

(2) Section 2283 is a rule of comity, the purpose of which is to promote "the harmonious concurrent activity of federal and state tribunals." Taylor and Willis, *The Power of Federal Courts to Enjoin Proceedings in State Courts*, 42 Yale L. J. 1169, 1196 (1933). As a rule of comity it is applicable only where both state and federal courts have "potential jurisdiction over the same subject-matter." *Hale* v. *Bimco Trading Co.*, 306 U. S. 375, 378. "Within that field it . . . is salutary," *Wells Fargo & Co.* v. *Taylor*, 254 U. S. 175, 183, but applying it where the state courts are without jurisdiction is to apply the statute beyond that field, and "to carry it beyond that field would materially hamper the federal courts in the discharge of duties otherwise plainly cast upon them by the Constitution and laws of Congress, which of course is not contemplated." *Ibid.*

This conclusion is squarely confirmed by *Bowles* v. *Willingham*, 321 U. S. 503, wherein the OPA Administrator was held entitled to a federal injunction against a state proceeding to enjoin issuance by the Administrator of certain rent orders. Noting that Congress had established an exclusive federal tribunal for challenging rent orders, the Court held that the state court lacked jurisdiction, and that, therefore, Section 265 (the more pervasive limitation on injunctions which preceded Section 2283) "does not come into play" (321 U. S. at 511). So here, where the controversy fell squarely within the field preempted by the National Labor Relations Act, the Ohio courts were wholly without jurisdiction and, accordingly, Section 2283 was inapplicable.

Nor did the adoption of the present version of this rule of comity, Section 2283, make the rule applicable to situations where federal jurisdiction is exclusive. The purpose of the revision was to make the statute even less restrictive of the federal court's exercise of its equity powers in the limited areas in which the statute could be applied. Specifically, the Reviser's Notes disclose that "the revised section restores the basic law as generally understood and interpreted prior to the [*Toucey* v. *New York Life Ins. Co.*, 314 U. S. 118] decision." H. Rep. No. 308, 80th Cong. 1st Sess., A181-A182.

(3) In addition, Section 2283 made it explicit that a federal court was empowered to grant injunctions against state court proceedings where "expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction . . .." Even if the statute were deemed to have general application to situations, such as the instant one, involving an invasion of an exclusive scheme of federal regulation, both the first and second express exceptions to Section 2283 remove this case from its prohibition.

The first exception cannot be construed literally. To do so would be to undermine implied "statutory qualifiations" of Section 265 which were recognized in *Toucey* and thereby to make Section 2283 even more sweeping a limitation on federal equity powers than was Section 265 as interpreted in *Toucey*. Plainly, however, the intent of the revisers was otherwise. The purpose of this first exception was to acknowledge the continued vitality as qualifications of Section 2283 of federal regulatory statutes which preclude competing state court actions. The National Labor Relations Act has been recognized as such a

statute; Moore's *Commentaries on the U. S. Judicial Code* (1949) 410. See Sections 10(a), (c), (f), (j) and (l) of the National Labor Relations Act (Appendix, *infra*, pp. 44–49).

Moreover, as to the second exception, the injunction which was requested from the Ohio court (and which did ultimately issue) would negate in advance any effective exercise of the jurisdiction conferred on the District Court by Section 10(j) of the National Labor Relations Act empowering the District Court to grant interim relief pending disposition of an unfair labor practice complaint before the Board. Accordingly, prior restraint of such a state court injunction was "necessary in aid of [the District Court's] jurisdiction."

This issuance of restraint "in aid of jurisdiction" was necessary even though there had not been a prior invocation of Board jurisdiction through the filing of charges and a resultant application for the exercise of federal judicial power under Section 10(j). Moreover, the jurisdiction which federal courts can protect consistently with Section 2283 comprehends the federal jurisdiction generally: that statute "does not prevent the federal courts from restraining interference by the state courts with jurisdiction vested exclusively in the federal courts . . . or in a federal agency." *National Labor Rel. Bd.* v. *New York State Labor Rel. Bd.*, 106 F. Supp. 749, 752 (S. D. N. Y. 1952).

(4) As the cases set forth in Section B, *supra*, show, one who sues to protect a private right from threatened invasion of the federal domain is no less entitled to complain and procure appropriate equitable relief than a governmental agency which sues to protect the

broad public interest. Nor does Section 2283 draw any distinction between injunctive suits against state court proceedings brought by private persons and similar suits brought by governmental agencies. Vindication of the jurisdiction of federal court and Board can be achieved upon the complaint of a union as well as upon the complaint of the federal Board.

ARGUMENT

A. The Court of Common Pleas Lacked Jurisdiction over Respondent's Petition because the Petition Alleged a Controversy within the Exclusive Domain fixed by the National Labor Relations Act.

The question presented by petitioners in the Petition for Certiorari and in this Brief assumes as its premise that the Court of Common Pleas for Cuyahoga County was without jurisdiction of respondent's action under the rule announced in *Garner* v. *Teamsters Union*, 346 U. S. 485.[2] Therefore, before turning to the question presented—the scope of district court power to enjoin the Ohio court's usurpation of

[2] *Garner* is the most recent in the series of decisions by this Court declaring certain realms of labor relations policy to be within the field which was preempted by Congress through enactment of the National Labor Relations Act, as amended (49 Stat. 449, 61 Stat. 136, 29 U. S. C. 151, *et. seq.*) and thereby closed to state regulation. See: *LaCrosse Tel. Corp.* v. *Wis. Board*, 336 U. S. 18; *Plankinton Packing Co.* v. *Wisconsin Board*, 338 U. S. 953; *Automobile Workers* v. *O'Brien*, 339 U. S. 454; *Bus Employees* v. *Wisconsin Board*, 340 U. S. 383; see also *Hill* v. *Florida*, 325 U. S. 538; *Bethlehem Co.* v. *State Board*, 330 U. S. 767; but cf. *Allen-Bradley Local* v. *Board*, 315 U. S. 740; *Auto. Workers* v. *Wis. Board*, 336 U. S. 245; *Algoma Plywood Co.* v. *Wis. Board*, 336 U. S. 301; *United Workers* v. *Laburnum Corp.*, 347 U. S. 656.

jurisdiction—petitioners deem it appropriate to demonstrate the validity of that assumption.[3]

Here, as in *Garner*, an employer initiated a state court action complaining of peaceful picketing.[4] And here, as in *Garner*, the relief sought was limited to an injunction against that picketing. In the instant action Richman complained that Amalgamated was engaged in a "conspiracy" to use "economic pressure . . . against plaintiff" to cause "plaintiff to force sufficient of its eligible employees to become members of defendant Amalgamated, so that defendant Amalgamated may become the representative of its such employees for the purpose of collective bargaining with plaintiff, regardless of the desires of a majority thereof" (R. 6). Thus, the motive allegedly underlying Amalgamated's picketing is identical with that attributed to the *Garner* pickets—"to coerce [the employers] into compelling or influencing their employees to join the union." *Garner* v. *Teamsters Union*, *supra*, at 487.

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[3] The Court of Appeals noted that a question of whether the state court lacked jurisdiction was "collaterally involved" in the instant case (211 F. 2nd at 450); the court by-passed the question by disposing of the case on the basis of Section 2283.

[4] The Court of Appeals, although noting a Richman "allegation of sporadic picketing demonstrations by as many as twenty pickets . . .", expressly found that "There is no suggestion in the Richman petition that violence or threats accompanied the union picketing." 211 F. 2nd at 451. The District Court in the removal proceeding (see p. 4, *supra*), found that, "There is no allegation of fraud or violence in connection with the picketing and it is not fairly to be inferred that the picketing is other than peaceful." 114 F. Supp. at 186. The allegation referred to, balanced against these concurrent findings that the picketing in question was not claimed to be other than peaceful, cannot rise to the dignity of activity which was subject to state power because it "threatened a probable breach of the state's peace or would call for extraordinary police measures by state or city authority." *Garner* v. *Teamsters Union*, 346 U. S. at 488.

This Court noted in *Garner* that Congress, in the National Labor Relations Act, "has forbidden labor unions to exert certain types of coercion on employees through the medium of the employer" (346 U. S. at 488-489). Thus, "Congress has taken in hand this particular type of controversy where it affects interstate commerce" (*Id.* at 488). Accordingly, this Court affirmed the conclusion of the Pennsylvania Supreme Court that the "grievance fell within the jurisdiction of the National Labor Relations Board to prevent unfair labor practices" (346 U. S. at 487). The Court took explicit occasion to note that "It is not necessary or appropriate for us to surmise how the National Labor Relations Board might have decided this controversy. . . . The power and duty of primary decision lies with the Board, not with us" (346 U. S. at 489). This Court concluded that Pennsylvania could not regulate the picketing no matter how the Board might have decided the controversy (346 U. S. at 499-500). "For a state to impinge on the area of labor combat designed to be free is quite as much an obstruction of federal policy as if the state were to declare picketing free for purposes or by methods which the federal Act prohibits" (346 U. S. at 506).[5]

[5] The Board might have found the picketing to be an unfair practice in violation of Section 8 (b) (2) of the Act (see *Garner* v. *Teamsters, C. & H. Loc. Union 776*, 373 Pa. 19, affirmed 346 U. S. 485), or an unfair practice in violation of Section 8(b)(1)(A) (see *Capital Service* v. *National Labor Relations Board*, 204 F. 2nd 848 (C. A. 9), affirmed 347 U. S. 501). The actual purpose of the picketing, however, was to further Amalgamated's campaign to "organize employees of Richman and . . . publicize the fact that Richman, among other employers, manufactures non-union clothing" (R. 17), see *supra*, p. 3. Thus, in petitioners' view, the picketing was to inform the consuming public and was entirely legitimate organizational activity affirmatively protected by Section 7. Compare the authoritative view of Senator Taft, who in commenting on the validity of a union

"On the basis of the allegations," the conduct challenged here, like that in *Garner*, could have been complained of "to the National Labor Relations Board. The [petitioners] were subject to being summoned before that body to justify their conduct. We think the grievance was not subject to litigation in the tribunals of the State" (346 U. S. at 501).[6]

With respect to the state court's lack of jurisdiction, *Garner* and the instant case are indistinguishable.

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appeal to "the general public not to buy products of non-union manufacturers" declared, "This is not forbidden by the act, since it is merely persuasion." 93 Cong. Rec. (1947) A3370. See also *Bakery Drivers Local Union No. 27 and Capital Service, Inc.*, 100 NLRB 1092. See Appendix, *infra*, pp. 44-45, for the texts of the sections of the Act referred to.

[6] The conclusion required by *Garner* is in no way altered by the fact that respondent's state court pleading, almost by way of afterthought, alternatively characterizes the alleged conspiracy by Amalgamated to coerce Richman to force union membership on its employees as an "unreasonable restraint of trade" within the meaning of Ohio's anti-trust statute, the Valentine Act (R. 9). The *Garner* rule does not turn on the label given the competing state pattern of regulation; the rule is concerned with substance—concretely, the supremacy under the Constitution of federal law. "To the extent that Congress prescribed preventive procedure against unfair labor practices, that case recognized that the Act excluded conflicting state procedure to the same end." *United Workers* v. *Laburnum Corp.*, 347 U. S. 656, 665. In short, the present Act, like the original Wagner Act, "'is paramount over other laws that might touch upon similar subject matters.'" *Amalgamated Workers* v. *Edison Co.*, 309 U. S. 261, 267, quoting from Sen. Rep. No. 573, 74th Cong., 1st Sess., page 15. See *Bus Employees* v. *Wisconsin Board*, 340 U. S. 383, striking down, as in conflict with the Act, the Wisconsin statute providing for compulsory arbitration of strikes in public utilities; the state policies there held subordinate to the Act would seem far more substantial than those which might conceivably be invoked by Ohio courts to justify turning the clock back to a time when trade unionism was considered an unlawful conspiracy in restraint of trade. Cf. *Auto Workers* v. *Wis. Board*, 336 U. S. 245, 257-258. See generally, *Weber* v. *Anheuser-Busch*, No. 97, October Term, 1954, now pending before this Court, and particularly the briefs filed therein by the National Labor Relations Board and the Congress of Industrial Organizations as *amici curiae*.

The difference between the cases—a difference to which the remainder of this Brief is devoted—is that in the instant case, the unions aggrieved by state court usurpation of federal jurisdiction have sought to challenge that usurpation directly through invocation of federal equity power to protect federal authority. Petitioners believed that these federal rights required prompter vindication than that likely on appeal through tiers of state courts lacking jurisdiction to the discretionary salvation afforded by this Court's certiorari review. In large measure, petitioners' resort to the injunctive remedy discussed hereafter was necessitated by the gravity of the state court threat to petitioners' rights. In *Garner,* the state court enjoined the union from picketing one loading platform (346 U. S. at 486-487). Here, the employer sought—and the state court ultimately issued—*an injunction preventing Amalgamated from picketing 69 retail outlets in sixteen states.* In the face of the assertion by the Cuyahoga County Court of Common Pleas of power to supplant the National Labor Relations Board and the federal courts and declare its own uniform labor policy throughout one-third of the nation, Amalgamated sought immediate aid in the federal District Court.

B. The District Court Had Jurisdiction of Petitioners' Complaint.

Section 1337 of the Judicial Code confers on the federal district courts "original jurisdiction of any civil action or proceeding arising under any Act of Congress regulating commerce . . ." 28 U. S. C. 1337, 62 Stat. 931.

Paragraph 1 of petitioners' complaint specifically invokes the jurisdiction created by the foregoing language, and recites that the instant proceeding—to enjoin state invasion of federal rights embodied in the National Labor Relations Act and exclusively governed by the Board—is one which "arises under" the Act (R. 16). Inasmuch as the Act is one "regulating commerce" (*Capital Service Inc.* v. *Labor Board*, 347 U. S. 501, 504, citing *Labor Board* v. *Jones & Laughlin*, 301 U. S. 1), the instant proceeding arising under the Act would appear to fall within the quoted jurisdictional provision.

This literal conclusion is confirmed by two cases in this Court. In *A. F. of L.* v. *Watson*, 327 U. S. 582, decided in 1946 (when 28 U. S. C. 41(8), the predecessor of present Section 1337, was the applicable statute), various unions, employees and employers brought suit in a federal district court to enjoin the enforcement in the Florida courts of state statutes alleged to curtail the right to bargain for a "closed shop" secured to plaintiffs by the original National Labor Relations Act. "And since the right asserted is derived from or recognized by a federal law regulating commerce, a majority of the Court conclude that a suit to protect it against impairment by state action is a suit 'arising under' a federal law 'regulating commerce'" (327 U. S. at 591).

A. F. of L. v. *Watson* was found to sustain the district court's jurisdiction under Section 1337 in *Capital Service, Inc.* v. *Labor Board*, 347 U. S. 501, 504, decided last term. There this Court affirmed an injunction issued by the district court at the behest of the Board to stay enforcement of a state court

injunction against picketing which state court injunction conflicted with the exclusive procedures established by the Labor Relations Act.

Capital Service and *A. F. of L.* v. *Watson* illustrate the further point that district court jurisdiction to enjoin state invasion of the area preempted by the National Labor Relations Act in no way depends on whether the complainant is the Board or a private party. The cases in the lower courts are in accord. Thus, the Board was permitted to sue in *National Labor Rel. Bd.* v. *New York State Labor Rel. Bd.*, 106 F. Supp. 749 (S. D. N. Y.), and *National Labor Relations Board* v. *Industrial Com'n*, 84 F. Supp. 593 (D. Utah), affirmed 172 F. 2nd 389 (C. A. 10). An employer injured by state invasion of federal labor policy successfully maintained an injunctive action in *Linde Air Products Co.* v. *Johnson*, 77 F. Supp. 656 (D. Minn.). And unions whose federal statutory rights were jeopardized by state regulation secured injunctions in *Food, Tobacco, Agricultural and Allied Wkrs.* v. *Smiley*, 164 F. 2nd 922 (C. A. 3), and in *United Office and Professional Wkrs.* v. *Smiley*, 77 F. Supp. 659 (M. D. Pa.).

It is plain from the foregoing that the injunctive action brought by petitioners—whose federal rights were identical with those recognized and accorded legal protection in *Garner*—was within the jurisdiction of the District Court. For "where Congress, acting within its constitutional authority, has vested a federal agency with exclusive jurisdiction over a subject matter and the intrusion of a state would result in conflict of functions, the federal court may

enjoin the state proceeding in order to preserve the federal right." *Capital Service*, *supra*, at 504.[7]

C. Section 2283 Does Not Prevent the District Court from Enjoining the Invalid State Court Proceedings.

(1) *Introduction*

Petitioners submit that they have demonstrated, in the foregoing portions of this Brief, that the Cuyahoga County Court of Common Pleas was without jurisdiction of Richman's action and that the federal District Court had jurisdiction of the Amalgamated's proceeding brought to enjoin Richman's action.

The sole remaining question is the principal "question presented" in the instant case—whether the courts below were correct in their conclusion that the limitation on federal injunctions "to stay proceedings in a State court" embodied in Section 2283 of the Judicial Code (28 U. S. C. 2283, 62 Stat. 968), is so broad as to bar the district court, in the exercise of its equity jurisdiction, from granting the relief sought.

To conclude, as is required by the opinion below, that a district court is powerless to restrain pursuit

[7] The foregoing quotation from the *Capital Service* opinion is supported by the following citations (347 U. S. at 504-505): "See *Public Utilities Commission* v. *Gas Co.* 317 U. S. 456, 468-470; *Baules* v. *Willingham*, 321 U. S. 503, 510-511; Cf. *American Federation of Labor* v. *Watson*, *supra*, at 593-595." All of the three cited cases were suits in federal district courts to restrain state invasion of an exclusive federal domain; the second and third cases were, specifically, suits to enjoin state judicial proceedings; the first and third suits were initiated by private litigants.

of a state court injunction even where such injunction would be a clear invasion of the Congressionally declared exclusive domain of the federal Labor Board and the federal courts, leads to "deplorable" consequences, as Judge Frank has candidly characterized them. *International Union* v. *Underwood Corp.* (C. A. 2, No. 182, January 6, 1955) (not yet officially reported), page 279, n. 14. "For, if the state-court does grant such an injunction,[8] and if its order is fatally defective as exceeding the proper area of state jurisdiction but is affirmed by the highest state court, then, long before that order can be reversed by the United States Supreme Court, its practical effect may well be to break the strike by invalid means." *Id.* at 276.

The instant state court action, typical of the classic suit for a labor injunction, has borne fruit in a "temporary" injunction which has thus far halted Amalgamated's organizational picketing of Richman for almost two years—*and halted that picketing in one-third of the States of the United States.* Under Ohio practice, this injunction was not a final order and hence was not appealable to Ohio's intermediate and ultimate appellate courts.[9] But even had it been appealable under the state practice, it would still have

[8] It is to be recalled (*supra*, pp. 4-6) that in the instant case the state court did grant an injunction after denying the Amalgamated motion to dismiss for lack of state court jurisdiction over Richman's petition.

[9] The temporary injunction was not a final order within the meaning of Section 12223.2 of the General Code, and therefore not appealable pursuant to Section 12223.3. *May Co.* v. *Bailey Co.*, 81 Ohio St. 471; *Jones* v. *First Nat'l Bank*, 123 Ohio St. 642, 643-647; *Tegtow* v. *Randall Park Holding Co.*, 94 Ohio App. 505; *Lucas* v. *Kraft*, 93 Ohio App. 342. Revision of the General Code since the issuance of the temporary injunction has changed the section numbers of the cited code provisions to 2505.02 and 2505.03 respectively, but it does not appear to have changed their substance. See pages vii, 18 and 28 of the volume containing Titles 25 and 27 of Page's Ohio Revised Code Annotated (1954

lacked the finality required for review on certiorari in this Court because it was not denominated a "permanent" injunction. *Building Union* v. *Ledbetter Co.*, 344 U. S. 178. Nor could Amalgamated have flouted the injunction in calculated reliance on the proposition that the Court of Common Pleas was without jurisdiction: courts lacking jurisdiction can cite for contempt those who violate their invalid decrees. *United States* v. *Mine Workers*, 330 U. S. 258, 293-295.

Unions suffering under invalid state court restraint will find that as a practical matter mere lapse of time will render useless the ultimate appellate remedy in this Court theoretically made available by the *Garner* decision. By the time the Garner path has been traversed, the membership of a union invalidly enjoined by state court action from striking and picketing for higher wages and better working conditions will long since have resigned themselves to accepting far less than desired and, more importantly, far less than their economic strength, which under federal law they are permitted concertedly to exert, could have secured. By the time the *Garner* path has been traversed, employees seeking to join together with their fellow employees in order to enjoy the status of collective bargaining, and striking and picketing to this end, will, under the restraint of an invalid state court injunction, long since have given up the unequal struggle. In truth, the state court injunction—temporary or permanent—speaks with an air of finality. Realistically viewed it is the terminal point of the ligitation, the end of the economic struggle by workingmen for collective bargaining status or higher standards. The guarantees and prescriptions of the federal labor act are irretrievably lost.

The prompt equitable relief sought in the instant action is the only effective answer to state court usurpation of the federal field. The needs were succinctly stated in the brief filed in this Court in *Capital Service* by the National Labor Relations Board; emphasizing the added importance of district court injunctive relief in the light of this Court's decision in *Ledbetter, supra,* the Board said (p. 25 n. 12):

> Under this holding, it would appear that, if a state court preliminary injunction which invaded an exclusive federal jurisdiction were ever to be reviewed by this Court, this could only be achieved by means of the procedure utilized herein, i. e., an independent equity suit in the federal district court.

For when the disputants in a labor controversy resort to court, "The preliminary proceedings . . . make the issue of final relief a practical nullity . . . [I]mprovident issue of the injunction may be irreparable. . . ." Frankfurter and Greene, *The Labor Injunction* (1930) 200-201.

Nor is it any answer to urge that these deplorable consequences need not come about since the the Board, through injunctive proceedings like that upheld in *Capital Service Inc.* v. *Labor Board, supra,* can protect its jurisdiction and the federal rights of unions and union members. *Capital Service* was a unique case, made possible only because the employer there initiated a state court action *and* filed charges with the Board. It was because of the charges filed with it that the Board was enabled to issue its complaint of unfair practice and, in support thereof, sought federal injunctions both against the alleged unfair practice

and against enforcement of the competing state court decree. The affirmance in *Capital Service* of the district court stay of the state court proceedings is salutary; but it may be confidently anticipated that employers will hereafter largely confine their attempts to restrain picketing to the state courts and thereby avoid the possibility of Board interference with invalid state court decrees.

The Court of Appeals for the Second Circuit, in *International Union* v. *Underwood Corp., supra*, assumed that the Board could initiate district court proceedings of the kind here sought to be sustained without awaiting the filing of charges. As indicated *infra*, pp. 39-41, there is no logical basis for concluding that the Board could bring such an independent action but that the union injured by the state court could not. Whether the Board could bring such an independent action, however, is academic: it need not do so and it seems to lack the resources to do so. See *id.* at page 277. The fact is that the National Labor Relations Board is not set up to take prompt and effective steps to vindicate the federal regulatory authority in the innumerable state court cases which result or might result in trespass upon that authority. The Board does not have the staff or the means to engage in a task of such dimensions. See pp. 46-47 of Respondent's Brief in *Garner*. This is but another instance where preservation of the broad public interest can only be achieved through numerous private litigants alert to the danger to their personal rights and quick to act in their defense. In permitting private persons with a direct personal interest to fend off encroachments upon the exclusive federal domain through resort to the federal courts, federal courts

can ensure that the federal domain receives the protection which the regulatory agency, the Board in this instance, is incapable of giving.

In short, if the decision in the instant case is affirmed, the protection thrown about the federal field in *Garner* and *Capital Service* will have been largely destroyed because state court proceedings trespassing on preempted fields would in the vast bulk of cases be beyond effective challenge from any quarter. If this Court upholds the court below in the instant case, this decision and *Capital Service* would, taken together, have the ironic effect of channeling a vast amount of complex litigation interpreting the National Labor Relations Act into state courts which have neither expertise nor jurisdiction. For this is not a situation in which both the state and federal courts are equally competent to pass upon the jurisdictional issue. The answer to whether or not there is jurisdiction in the state court requires, of necessity, subtle interpretation of the National Labor Relations Act. Aside from the Board, it is only in the federal courts, which have a definitive place in the statutory scheme, that tribunals are found with either sufficient experience or knowledge to pass upon the intricate subsidiary questions of statutory construction involved in the ultimate jurisdictional determination.

Finally, if, contrary to petitioners' surmise, a substantial number of cases were to survive through the hierarchies of state courts until vindication of the federal right, it would only be because this Court—the single knowledgeable tribunal in that appellate path—utilized its discretionary writ of certiorari with substantial frequency for the unintended purpose of examining discrepant fact situations rather than for

resolving legal questions of broad applicability. The Congressional purpose—primary adjudication by the Board and auxiliary adjudication by the federal district courts and courts of appeal—would be effectively frustrated.

Uniform administration of a national policy of labor relations by a single expert tribunal, supported by a federal judiciary thoroughly versed in and expressly part of the Congressional plan, would give way to a hodge-podge of conflicting and uninformed determinations by state judges whose best intentions could supply neither familiarity with the subject matter nor jurisdiction over it.[10] The occasions on which this Court would be impelled to exercise some supervisory restraint would act not so much to stem the flow of error as simply to clog this Court's docket with cases which should have been tried and determined by the National Labor Relations Board in the first instance.

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[10] See, e. g., *Satin, Inc.* v. *Local Union 445, IBEW*, 26 Labor Cases Par. 68,508 (Mich. Cir. Ct., 1954). There the Circuit Court for Calhoun County, Michigan, enjoined picketing found to be for the purpose (violative of Michigan public policy) of coercing employees, directly and through the medium of the employer, into joining the defendant union. *Garner* was distinguished on numerous grounds, among which was the following (26 Labor Cases, Par. 68,508, at pp. 86,693-86,694):

> The *Garner* case is clearly distinguishable from the case at bar. The U. S. Supreme Court in denying certiorari in [*Way Baking Co. v. Teamsters*, 335 Mich. 478, cert. denied, 345 U. S. 957] by implication at least, recognized this difference. This Court has jurisdiction to use its equity powers to prevent the declared policy of this State from being frustrated and held for naught. To do so does not violate the *Garner* case where no such policy was involved, nor does it infringe upon the rights of Congress under the Interstate Commerce clause, because Congress has evinced no desire to substitute its judgment for the judgment of the State Legislature, and has, in reality, specifically recognized the right of a state to stop forcible unionization.

Nor does Section 2283 of the Judicial Code, the limitation on federal equity power relied on by the court below, require the conclusion—and the "deplorable" consequences to petitioners and to the public interest which flow from that conclusion—that the District Court was powerless to restrain pursuit of the Ohio court's trespass on the federal domain.

Section 2283 provides as follows:

> A court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments.

It is the most recent version of statutory language[11] which has been "a limitation of the power of the federal courts dating almost from the beginning of our history and expressing an important Congressional policy—to prevent needless friction between state and federal courts". *Oklahoma Packing Co.* v. *Gas Co.*, 309 U. S. 4, 8-9.[12]

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[11] The present language appeared in the 1948 revision of the Judicial Code. Theretofore the relevant proviso was the more broadly worded prohibition embodied in former Section 265 of the Judicial Code (former 28 U. S. C. 379) which read as follows:

> The writ of injunction shall not be granted by any court of the United States to stay proceedings in any court of a State, except in cases where such injunction may be authorized by any law relating to proceedings in bankruptcy.

This language had been carried over unchanged in the 1911 Judicial Code from Section 720 of the Revised Statutes of 1874, which in turn derived from Section 5 of the Act of March 2, 1793: ". . . nor shall a writ of injunction be granted to stay proceedings in any court of a State . . ." 1 Stat. 333, 334.

[12] See, generally, Barrett, *Federal Injunctions Against Proceedings in State Courts*, 35 Calif. L. Rev. 545 (1947); Taylor and Willis, *The Power of Federal Courts to Enjoin Proceedings*

"Section 2283 . . . does not go to the jurisdiction of a federal court, but is an affirmation of the rules of comity . . ." Moore's *Commentary on the U. S. Judicial Code* (1949) 407. That the statute is not jurisdictional was made plain by this Court in *Smith* v. *Apple*, 264 U. S. 274, 278-280, in discussing former Section 265 of the Judicial Code, Section 2283's more broadly worded predecessor:[13]

> It is not a jurisdictional statute. It neither confers jurisdiction upon the district courts nor takes away the jurisdiction otherwise specifically conferred upon them by the fereral statutes . . . Where the plaintiff has the undoubted right to invoke its federal jurisdiction the court is bound to take the case and proceed to judgment . . . And when the court takes jurisdiction and determines that in the light of §265 of the Code it is either authorized or prevented from granting the injunction prayed, its decision . . . is plainly not a decision upon a jurisdictional issue but upon the question whether there is or is not equity in the particular bill; that is, a decision going to the merits of the controversy.

This construction of Section 265 was expressly reaffirmed in *Woodmen of The World* v. *O'Neill*, 266 U. S. 292, 298.[14]

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in State Courts, 42 Yale L. J. 1169 (1933); Durfee and Sloss, *Federal Injunction Against Proceedings in State Courts: The Life History of a Statute*, 30 Mich. L. Rev. 1145 (1932); Warren, *Federal and State Court Interference*, 43 Harv. L. Rev. 345 (1930); Note, 52 Yale L. J. 150 (1942); Note, 48 Northwestern U. L. Rev. 383 (1953).

[13] See note 11, *supra*.

[14] See also the observation by Mr. Justice Reed in the dissenting opinion in *Toucey* v. *New York Life Ins. Co.*, 314 U. S. 118, 141

(2) *Section 2283 applies only where state and federal courts have concurrent jurisdiction, and hence it is inapplicable here*

Because Section 265 was always recognized to be "a rule of comity and like that rule is limited in its field of operation", *Wells Fargo & Co.* v. *Taylor*, 254 U. S. 175, 183, it was always plainly understood that the proviso, "as settled by repeated decisions of this Court, does not prohibit in all cases injunctions staying proceedings in a state court. Such injunctions may be granted, consistently with its provisions, in several classes of cases". *Smith* v. *Apple*, *supra*, at page 279. Under the broad language of Section 265 there was in the past substantial controversy with respect to certain apparent exceptions.[15] There has

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(an opinion expressly endorsed by the revisers who drafted Section 2283 (H. Rep. No. 308, 80th Cong., 1st Sess., A182, quoted in the Appendix, *infra*, pp. 49-50)), that "§265 is recognized as merely a limitation on general equity powers . . . while the Norris-LaGuardia Act, 47 Stat. 70, 29 U. S. C. §101, is a denial of jurisdiction to enjoin" (314 U. S. at 154 n. 24). There are intimations in the opinion below that Section 2283 was regarded by the court as a jurisdictional limitation, and the Court of Appeals for the Second Circuit, in *International Union* v. *Underwood Corp.* (No. 182, January 6, 1955), ordered a dismissal "for lack of jurisdiction" in reliance on Section 2283. As *Smith* v. *Apple* and the other cited references make plain, however, there is no basis for any such construction of the statute.

[15] Until 1941, when this court decided *Toucey* v. *New York Life Ins. Co.*, 314 U. S. 118, (see note 16, *infra*) there were several judicially recognized exceptions to the statute. It was understood that Section 265 did not prevent federal courts from restraining state judicial interference with a *res* in the custody of the federal courts. See, e. g., *Oklahoma* v. *Texas*, 265 U. S. 490; *Kline* v. *Burke Constr. Co.*, 260 U. S. 226, 235. Federal courts were thought to be free to enjoin the relitigation of cases determined by them. *Gunter* v. *Atlantic Coast Line*, 200 U. S. 273, 292; *Julian* v. *Central Trust Co.*, 193 U. S. 93, 112-114. And it

never, however, been any question that this rule of comity, given its broadest sweep, was designed to accommodate—and hence was only applicable to—"two systems of courts having potential jurisdiction over the same subject-matter". *Hale* v. *Bimco Trading Co.*, 306 U. S. 375, 378. In short, the rule, and the statute which embodied it, were plainly without application where, as here, the state courts are wholly without "jurisdiction over . . . the subject-matter".

The inapplicability of Section 265 to cases where the state court lacked "jurisdiction over the . . . subject-matter" was plainly demonstrated by this Court's decision in *Bowles* v. *Willingham*, 321 U. S. 503. The Court was there construing Section 265, and was construing it in the light of its then recent decision in *Toucey* v. *New York Life Ins. Co.*, 314 U. S. 118, which repudiated certain earlier impairments of the statute and enforced it with renewed vigor in the fields to which it was applicable.[16]

The question in *Bowles* v. *Willingham* was whether a federal court, at the instance of the Administrator

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was understood that, notwithstanding Section 265, federal courts could enjoin enforcement of state court judgments which were fraudulently obtained. See *Wells Fargo & Co.* v. *Taylor*, 254 U. S. 175; cf. *Marshall* v. *Holmes*, 141 U. S. 589. In addition, Section 265 did not operate to limit the power of federal courts to enjoin further state proceedings in a removed action (see *Traction Co.* v. *Mining Company*, 196 U. S. 239, 245) nor did it interfere with other statutory provisions expressly or impliicitly sanctioning restraints upon conflicting state actions in particular situations (e. g., Interpleader Act of 1926, 44 Stat. 416, amending 39 Stat. 929; Act of 1851, limiting shipowners' liability, 9 Stat. 635, 636; see pp. 34-35, *infra*).

[16] In *Toucey* v. *New York Life Ins. Co.*, *supra*, preexisting interpretations of Section 265 were reexamined. Giving to the language of the statute a more nearly literal breadth, this Court expressly repudiated the so-called "relitigation" exception to

of OPA, had power to enjoin enforcement of a state court decree enjoining the Administrator from issuing certain allegedly invalid price orders. This Court, noting that Congress had created a special tribunal (the Emergency Court of Appeals) to which it had confided exclusive jurisdiction over challenges to the validity of rent orders, squarely held (321 U. S. at 511):

> Congress thus preempted jurisdiction in favor of the Emergency Court to the exclusion of state courts. The rule expressed in §265 which is designed to avoid collisions between state and federal authorities (*Toucey* v. *New York Life Ins. Co., supra*) thus does not come into play.[17]

Four years after *Bowles* v. *Willingham*, Section 265 was replaced by the present rule, Section 2283. Comparing the wording of the two provisos, it is evident that Congress intended to assure for the future a less inclusive ban on federal injunctions against state courts. This is confirmed by the Reviser's Notes on the new section, which comprise the entire formal legislative history. Specifically, the Notes disclose, "the revised section restores the basic law as generally understood and interpreted prior to the Toucy [*sic*] decision". H. Rep. No. 308, 80th Cong., 1st

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Section 265 and indicated serious doubt as to the validity of the cases enjoining the enforcement of fraudulently obtained state court judgments.

[17] There was another ground for the *Bowles* v. *Willingham* decision—a finding that Section 205(a) of the Price Control Act authorizing suits to enjoin violations was an implied amendment to Section 265; see *infra*, page 35. But that the quoted holding was an independent ground of decision has been confirmed by this Court. *Porter* v. *Dicken*, 328 U. S. 252, 255 n. 1; see Barrett, *op. cit. supra*, note 12, at 561-562; Hart and Wechsler, *The Federal Courts and the Federal System* (1953) 1076.

Sess., A181-A182. (See Appendix, *infra*, pp. 49-50, for full text of Reviser's Notes.) Section 2283 has thus shrunk the statutory limitation on district court equity power to, at least, its pre-*Toucey* dimensions. In any event, it is plain that Section 2283 was not intended to operate as a legislative reversal of the *Bowles* v. *Willingham* construction of the predecessor law.

The instant case is a case like *Bowles* v. *Willingham*—a case in which a federal district court was called upon, in the exercise of its equity jurisdiction, to enjoin state court usurpation of powers exclusively reserved to a federal tribunal. *Bowles* v. *Willingham* made it plain that even under *Toucey*, which accorded the ban on federal injunctions against state judicial proceedings the broadest scope it has ever enjoyed, the statute was without application when the state court was without jurisdiction.

Accordingly, where, as here, "Congress thus preempted jurisdiction . . . to the exclusion of state courts," the statute "does not come into play" (321 U. S. at 511).

The rationale of the statute and the rationale of its limited scope are equally plain. The statute "is intended to give effect to a familiar rule of comity and like that rule is limited in its field of operation. Within that field it tends to prevent unseemly interference with the orderly disposal of litigation in the state courts and is salutary; but to carry it beyond that field would materially hamper the federal courts in the discharge of duties otherwise plainly cast upon them by the Constitution and the laws of Congress.

which of course is not contemplated". *Wells Fargo & Co.* v. *Taylor, supra*, at 183.

In conclusion, in order that the limited scope of our argument be fully understood, these general observations are set forth. The foregoing contentions and supporting arguments and cases recognize the fact that potentiality of conflict inheres in our federal system of parallel courts and that measures must be taken and rules designed to reduce, if not avoid, such incidence of collision. When two separate governments shape the lives of a citizenry common to both, when separate and independent courts pass on questions concerning their liberty and their property, there is clearly a need for regulatory devices such as Section 2283.

This rule has, by virtue of flexible interpretation and accommodation,[18] served as a means of reducing conflict between these parallel systems of courts in those areas in which they share power.

But where there is no such overlap of jurisdiction, no concurrent power, there is then no real basis for collision which the federal courts should recognize

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[18] Cf. Taylor and Willis, *op. cit. supra*, note 12, at 1196:

> The very nature of the problem is such that to lay down a rigid rule governing the right of a federal court to decline to exercise jurisdiction in deference to a state court is neither practicable nor desirable. Necessarily, much must be left to depend upon whether or not the facts of a particular case present a situation in which to take jurisdiction would be to interrupt the harmonious concurrent activity of federal and state tribunals which the principles of comity are designed to promote, or would be to run counter to the policy of non-interference which the successful maintenance of a dual system of courts requires.

under principles of comity. If there is a collision between federal and state governments because of a state court's trespass upon the federal domain—the domain of the supreme sovereign and the exclusive sovereign when it chooses to exercise its constitutional powers—the unseemly conduct is to be found in the state court's action, the unseemly conflict is engendered by the state court's disregard of the federal scheme. The federal system is endangered by the action of the state court and not by the counteraction of the federal court. In short, the same considerations which require exercise of self restraint upon the part of our federal system of courts *vis-à-vis* state courts also require that the same federal courts be possessed of sufficient powers to act when our state courts, either through ignorance or irresponsibility, choose to challenge the rule of federal supremacy in those areas constitutionally allotted.

In short, petitioners submit that the logic of the statute and the cases construing it require the conclusion that it is wholly without application in a case, like the instant one, where federal jurisdiction is exclusive.

(3) *In any event, the instant case falls within express exceptions to Section 2283*

But even if Section 2283 were held to have general application to cases of this kind, the instant case would fall within either the first or the second express exception to the statute—permitting the district court to exercise its full equity power "as expressly authorized by Act of Congress" or "where necessary in aid of its jurisdiction." For the National Labor Rela-

tions Act, as Professor Moore has observed, is one of the "[e]xamples of statutory authorization, which are either sufficiently express to come within the first exception to §2283 or sufficiently clear to operate within the second exception, even within the rationale of the *Toucey* case." *Commentary on the U. S. Judicial Code* (1949) 410 and *ibid.* at n. 65.

(a) *First Exception*

Hastily considered, the first exception to Section 2283, permitting injunctions "as expressly authorized by Act of Congress," appears to refer to statutory authority which *in haec verba* provides for the issuance of decrees restraining state court proceedings. But the history of the phrase forecloses any such literal rendition.

The phrase is designed to cover what Professors Hart and Wechsler refer to as the "'statutory' exceptions" to the limitation on the district court's power to enjoin state court proceedings. Hart and Wechsler, *The Federal Courts and the Federal System* (1953) 1076. These statutory exceptions are the ones summarized in the *Toucey* opinion (see note 16, *supra*) plus others acknowledged thereafter. In *Toucey*, the Court first adverted to "the only legislative exception . . . incorporated directly into §265: ' . . . except in cases where such injunction may be authorized by any law relating to proceedings in bankruptcy' " (314 U. S. at 132), and then noted four other "statutory qualifications" of Section 265—the Removal Acts; the statutes limiting shipowners' liability; the Interpleader Act of 1926; and the Frazier-Lemke Act. Since *Toucey*, this Court has stated that, "There should now be added to that list the exception created by the Emergency Price Control Act of 1942."

Bowles v. *Willingham*, *supra*, at 540; see note 17, *supra*; see *Fleming* v. *Rhodes*, 331 U. S. 100; *Porter* v. *Dicken*, 328 U. S. 252; *Porter* v. *Lee*, 328 U. S. 246. And the Court of Appeals for the Ninth Circuit found power to enjoin state court proceedings infringing on the exclusive federal jurisdiction created by the National Labor Relations Act "implicit in the terms of the law." *National Labor Relations Bd.* v. *Sunshine Mining Co.*, 5 F. 2nd 757, 762 (C. A. 9); cf. *National Labor Relations Bd.* v. *Underwood Mach. Co.*, 198 F. 2nd 93, 95 (C. A. 1). See Sections 10(a), (e), (f), (j) and (l) of the Act (Appendix, *infra*, pp. 45-49).

Of all these recognized "statutory qualifications" of Section 265, only the Interpleader Act was *explicit*, authorizing district courts "to issue an order of injunction against each of [the claimants], enjoining them from instituting or prosecuting any suit or proceeding in any State court. . . ." 44 Stat. 416, amending 39 Stat. 929. All the other "statutory qualifications" can operate by implication only.

Does this mean that the implied qualifications have been eliminated by the phrase "as expressly authorized by Act of Congress"? Does such a result square with the Reviser's explanation: "An exception as to Acts of Congress relating to bankruptcy was omitted and the general exception substituted to cover all exceptions" (H. Rep. No. 308, 80th Cong., 1st Sess., A181; see Appendix, *infra*, p. 49)?

"What *does* 'expressly authorized' mean? 'Authorizing in so many words an injunction against state court proceedings'? If so, do any of the statutory exceptions mentioned by Justice Frankfurter [in *Toucey*] survive, except the interpleader excep-

tion? But what of the bankruptcy exception, which is 'expressly' mentioned in the Reviser's notes but is not 'expressly authorized' in the Bankruptcy Act . . . ?" Hart and Wechsler, *op. cit. supra*, at 1076.

The questions propounded lead to but one answer. The phrase "except as expressly authorized by Act of Congress" preserves all the "statutory qualifications" recognized in *Toucey* and the subsequent cases. "This first exception made by §2283 represents no change in the prior law." Moore's *Commentary on the U. S. Judicial Code* (1949) 410. The "statutory qualifications" referred to above make it plain that any statute creating, as did these statutes, a pattern of federal regulation in which, by necessary implication, state intervention cannot be tolerated, is one in which Congress has "expressly authorized" an injunction against state court proceedings. Cf. *Cooper* v. *Hutchinson*, 184 F. 2nd 119, 124 (C. A. 3) (Civil Rights Act "suit in equity" a statutory exception to §2283).

A contrary construction—one which confined the exception to its literal signification—would lead to results completely antithetic to the declared legislative purpose. Such a construction would illustrate the wisdom of Judge Learned Hand's remark, in interpreting another statute: "There is no surer way to misread any document than to read it literally . . ." *Guiseppi* v. *Walling*, 144 F. 2nd 608, 624 (C. A. 3) (concurring opinion).

(b) *Second Exception*

The instant case also falls within the second exception to Section 2283, which permits a district court to enjoin state court proceedings "where necessary in

aid of its jurisdiction". *See Capital Service, Inc.* v. *Labor Board, supra*, upholding on this ground an injunction issued at the request of the Board.

Here, the injunction sought by Richman in the Ohio court—an injunction which did issue—would negate any recourse to the National Labor Relations Board and to the district court jurisdiction conferred by Section 10(j) of the Act to grant interim relief pending Board disposition of an unfair practice complaint. To prevent frustration of its potential jurisdiction would seem a proper object of a district court sitting in equity and exercising its power to act "in aid of its jurisdiction".

Moreover, the decree issued by the district court under such circumstances would of course be "in aid of [the] jurisdiction" of the Board as well as that of the court. The "jurisdiction" which federal courts can protect consistently with Section 2283 has been interpreted to comprehend the federal jurisdiction generally. Thus, Judge Bondy pointed out in *National Labor Rel. Bd.* v. *New York State Labor Rel. Bd.*, 106 F. Supp. 749, 752 (S. D. N. Y.), that Section 2283 "does not prevent the federal courts from restraining interference by the state courts with jurisdiction vested exclusively in the federal courts . . . or in a federal agency".

Notwithstanding the contrary view expressed by the court below, it would seem plain that a district court vindicating the jurisdiction of the Board and the court need not await the active invocation of that jurisdiction. In *International Union* v. *Underwood Corp.* (C. A. 2, No. 182, January 6, 1955) (not yet

officially reported), the Court of Appeals for the Second Circuit made it plain that there was no reason in logic or in the language of Section 2283 why a district court could not restrain state court proceedings prior to the filing of charges—*i. e.*, "where necessary in aid of its [potential] jurisdiction". The court relied upon the persuasive analogy of the power of a federal court of appeals to mandamus a district court to hear a proper case "so that the power of review may not be defeated". *Schwab* v. *Coleman*, 145 F. 2nd 672, 678 (C. A. 4). Exercise by the appellate court of the extraordinary writ, correcting a non-appealable order which if unremedied would deprive the appellate court of the possibility of exercising its potential appellate jurisdiction, is authorized under Section 1651(a) of the Judicial Code which grants federal courts power to issue appropriate writs "in aid of their respective jurisdictions . . ." 28 U. S. C. 1651(a). See *In re Josephson* (C. A. 1, No. 4854 Original, December 23, 1954) (not yet officially reported) pp. 4-13. So here, restraint of the state proceeding by the district court would be "in aid of its jurisdiction" within the meaning of Section 2283.

(4) *The Amalgamated had standing to sue in the District Court*

The court below indicated in its discussion of the second exception to the statute ("in aid of jurisdiction"), that a private party had no standing to secure injunctive relief from state court invasion of exclusive federal jurisdiction.[19] The Court of Appeals for

[19] The court below did not explicitly pass upon or discuss the basic contention of Amalgamated that Section 2283 comes into play only in situations where both state and federal courts have concurrent jurisdiction.

the Second Circuit in *International Union* v. *Underwood Corp., supra*, in discussing the "in aid of jurisdiction" exception to Section 2283, also stated that a private party, as distinguished from the Board, had no "standing". There are these complete answers to this asserted distinction:

First: Section 2283 makes no distinction between actions brought by private litigants and those brought by the Board or any other governmental agency. Neither the general applicability of the statute, nor the scope of its express exceptions, depends upon the identity of the complainant seeking injunctive relief.

Second: The cases discussed under Point B of this Brief are square authority for the standing of unions and other private litigants to bring actions to enjoin invasion by state courts and agencies of the domain exclusively preempted by the National Labor Relations Act. See *A. F. of L.* v. *Watson, supra; Food, Tobacco, Agricultural and Allied Wkrs.* v. *Smiley, supra; United Office and Professional Wkrs.* v. *Smiley, supra; Linde Air Products Co.* v. *Johnson, supra.*

Third: Garner makes it plain that the very deprivation of federal rights here suffered by petitioners is entitled to judicial cognizance and vindication *at the union's behest.*

It would be difficult to rationalize the conclusion that although the complaining union has standing in a *federal court* to complain about a state administrative tribunal's invasion of exclusive federal jurisdiction, and although it has standing in a *state*

court to challenge that court's trespass on the federal domain, it nevertheless has no standing in a *federal court* to complain of such invasion by a *state court*. The cases cited above show that there is no basis for such a conclusion.[20] And the language of Section 2283 makes it plain that the identity of the complainant has no bearing on the applicability of that statute.

This is as it should be. For if, "in a specified case the people have thought proper to bestow certain

---

[20] Petitioners do not suggest that whether relief is sought by a federal agency or by a private litigant might not be properly regarded as a relevant factor by a district court weighing the equities in a particular case. Normally, it may be assumed, the act of a private litigant in seeking to restrain state invasion of the federal domain points up the consequent injury to personal rights and the irreparable nature of that injury; institution of a similar suit by a federal agency underscores the threat to the public interest generally. But such considerations are not pertinent to the question presented in the instant case. The courts below confined their decision to the proposition that district courts are without *power* to grant the requested relief. In this posture of the case, considerations relevant to the equities of the instant case were ignored.

In other cases, other equitable considerations might be regarded as relevant. In a case where, for example, the invasion of the federally preempted field was, unlike that in the instant case, peripheral—where there was substantial doubt as to whether there was exclusive jurisdiction in the federal Board and the federal courts—a district court might conclude not to enjoin the state court proceeding. What is important here, however, is that these interlaced questions of statutory interpretation and equitable discretion are precisely questions which the district courts—far better acquainted than their state counterparts with the complexities of the National Labor Relations Act—are well equipped to resolve. And in the unlikely event of too hasty district court intervention, the federal courts of appeal, whose established statutory role has made them fully familiar with the federal Act, can exercise prompt and effective supervision which the ordinary state practice cannot duplicate. Compare, for example the swift course of review in *International Union* v. *Underwood Corp.*, *supra*, (related *id.* at p. 271) with the unavailability, under the Ohio practice, of appellate review of the injunction granted in Richman's state court action (see note 9, *supra*).

powers on Congress, as the safest depository of them, and Congress has legislated within the scope of them, the people have reason to complain, that the same powers shall be exercised at the same time by the state . . ." *Houston* v. *Moore*, 5 Wheat. 1, 23.

Amalgamated seeks recognition by this Court that the District Court for the Northern District of Ohio has power to protect valuable rights of Amalgamated and its hundreds of thousands of members arising under the National Labor Relations Act. For if it be determined that the picketing complained of by Richman was concerted activity guaranteed by Section 7 of the Act, the intrusion of the state court plainly threatened—and in the instant case actually resulted in—irreparable loss of most substantial rights. Moreover, the determination as to whether Amalgamated's activity was so protected can only be made, in the first instance, by the National Labor Relations Board, the agency exclusively authorized by Congress to make such a determination, and the Amalgamated had a right to have the agency make such a determination.

If, on the other hand, the picketing complained of was such as to give rise to an unfair labor practice charge, Amalgamated had a right to controvert such a charge and to secure an informed adjudication in accordance with the exclusive practices and procedures prescribed in the National Labor Relations Act; a right to have the subject of such unfair practice charge investigated, heard and determined by the expert agency set up for such purpose; and, finally, if unfair practice were found, a right to have such finding and purported remedy reviewed as to substantiality of support for the finding and tested as

to appropriateness and scope of the remedy by those courts designated by Congress as the sole appellate tribunals in the statutory framework. The Amalgamated was entitled to be heard in accordance with the carefully designed procedures and practices established by Congress in the National Labor Relations Act.

The threatened loss of its federal rights at the hands of a state court which refused to recognize them gave Amalgamated standing to complain to the federal District Court and gave to that court power, which it should have exercised, to grant appropriate injunctive relief.

CONCLUSION

For the reasons stated it is respectfully submitted that the judgment of the Court of Appeals should be reversed.

Respectfully submitted,

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January 25, 1955

APPENDIX

TITLE 28, U. S. CODE

SEC. 1337. COMMERCE AND ANTITRUST REGULATIONS.

The district courts shall have original jurisdiction of any civil action or proceeding arising under any Act of Congress regulating commerce or protecting trade and commerce against restraints and monopolies.

SEC. 1651. WRITS.

(a) The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.

SEC. 2283. STAY OF STATE COURT PROCEEDINGS.

A court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments.

Section 265 of the Judicial Code of 1911, 36 Stat. 1162, 28 U. S. C. 379 (1940 ed.), provided:

> The writ of injunction shall not be granted by any court of the United States to stay proceedings in any court of a State, except in cases where such injunction may be authorized by any law relating to proceedings in bankruptcy

The relevant provisions of the National Labor Relations Act, as amended (49 Stat. 449, 61 Stat. 136, 29 U. S. C. Supp. V, 151 *et. seq.*), are as follows:

RIGHTS OF EMPLOYEES

SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8 (a) (3).

UNFAIR LABOR PRACTICES

SEC. 8. * * *

(b) It shall be an unfair labor practice for a labor organization or its agents—

(1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in section 7: * * *

(2) to cause or attempt to cause an employer to discriminate against an employee in violation of subsection (a) (3). * * *

Subsection (a) (3) of Section 8 relates to:

discrimination in regard to hire or tenure of employment or any term or condition of em-

ployment to encourage or discourage membership in any labor organization.

PREVENTION OF UNFAIR LABOR PRACTICES

SEC. 10. (a) The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce. This power shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, law, or otherwise: *Provided*, That the Board is empowered by agreement with any agency of any State or Territory to cede to such agency jurisdiction over any cases in any industry (other than mining, manufacturing, communications, and transportation except where predominantly local in character) even though such cases may involve labor disputes affecting commerce, unless the provision of the State or Territorial statute applicable to the determination of such cases by such agency is inconsistent with the corresponding provision of this Act or has received a construction inconsistent therewith.

* * * *

(e) The Board shall have power to petition any circuit court of appeals of the United States (including the United States Court of Appeals for the District of Columbia), or if all the circuit courts of appeals to which application may be made are in vacation, any district court of the United States (including the District Court of the United States for the District of Columbia), within any circuit or district, respectively, wherein the unfair labor practice in question occurred or wherein such person resides or transacts busi-

ness, for the enforcement of such order and for appropriate temporary relief or restraining order, and shall certify and file in the court a transcript of the entire record in the proceedings, including the pleadings and testimony upon which such order was entered and the findings and order of the Board. Upon such filing, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board. * * * The jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the appropriate circuit court of appeals if application was made to the district court as hereinabove provided, and by the Supreme Court of the United States upon writ of certiorari or certification as provided in sections 239 and 240 of the Judicial Code, as amended (U. S. C., title 28, secs. 346 and 347).

(f) Any person aggrieved by a final order of the Board granting or denying in whole or in part the relief sought may obtain a review of such order in any circuit court of appeals of the United States in the circuit wherein the unfair labor practice in question was alleged to have been engaged in or wherein such person resides

or transacts business, or in the United States Court of Appeals for the District of Columbia, by filing in such court a written petition praying that the order of the Board be modified or set aside. A copy of such petition shall be forthwith served upon the Board, and thereupon the aggrieved party shall file in the court a transcript of the entire record in the proceeding, certified by the Board, including the pleading and testimony upon which the order complained of was entered, and the findings and order of the Board. Upon such filing, the court shall proceed in the same manner as in the case of an application by the Board under subsection (e), and shall have the same exclusive jurisdiction to grant to the Board such temporary relief or restraining order as it deems just and proper, and in like manner to make and enter a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board; the findings of the Board with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall in like manner be conclusive.

(j) The Board shall have power, upon issuance of a complaint as provided in subsection (b) charging that any person has engaged in or is engaging in an unfair labor practice, to petition any district court of the United States (including the District Court of the United States for the District of Columbia), within any district wherein the unfair labor practice in question is alleged to have occurred or wherein such person resides or transacts business, for appropriate temporary relief or restraining order. Upon the

filing of any such petition the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction to grant to the Board such temporary relief or restraining order as it deems just and proper.

(l) Whenever it is charged that any person has engaged in an unfair labor practice within the meaning of paragraph (4) (A), (B), or (C) of section 8 (b), the preliminary investigation of such charge shall be made forthwith and given priority over all other cases except cases of like character in the office where it is filed or to which it is referred. If, after such investigation, the officer or regional attorney to whom the matter may be referred has reasonable cause to believe such charge is true and that a complaint should issue, he shall, on behalf of the Board, petition any district court of the United States (including the District Court of the United States for the District of Columbia) within any district where the unfair labor practice in question has occurred, is alleged to have occurred, or wherein such person resides or transacts business, for appropriate injunctive relief pending the final adjudication of the Board with respect to such matter. Upon the filing of any such petition the district court shall have jurisdiction to grant such injunctive relief or temporary restraining order as it deems just and proper, notwithstanding any other provision of law: *Provided further*, That no temporary restraining order shall be issued without notice unless a petition alleges that substantial and irreparable injury to the charging party will be

unavoidable and such temporary restraining order shall be effective for no longer than five days and will become void at the expiration of such period. Upon filing of any such petition the courts shall cause notice thereof to be served upon any person involved in the charge and such person, including the charging party, shall be given an opportunity to appear by counsel and present any relevant testimony: *Provided further*, That for the purposes of this subsection district courts shall be deemed to have jurisdiction of a labor organization (1) in the district in which such organization maintains its principal office, or (2) in any district in which its duly authorized officers or agents are engaged in promoting or protecting the interests of employee members. The service of legal process upon such officer or agent shall constitute service upon the labor organization and make such organization a party to the suit. In situations where such relief is appropriate the procedure specified herein shall apply to charges with respect to section 8 (b) (4) (D).

The Reviser's Notes on Section 2283 (H. Rep. No. 308, 80th Cong., 1st Sess., A181-A182):

> An exception as to Acts of Congress relating to bankruptcy was omitted and the general exception substituted to cover all exceptions.
>
> The phrase "in aid of its jurisdiction" was added to conform to section 1651 of this title and to make clear the recognized power of the Federal courts to stay proceedings in State cases removed to the district courts.
>
> The exceptions specifically include the words "to protect or effectuate its judgments," for lack

of which the Supreme Court held that the Federal courts are without power to enjoin relitigation of cases and controversies fully adjudicated by such courts. (See *Toucey* v. *New York Life Insurance Co.*, 62 S. Ct. 139, 314 U. S. 118, 86 L. Ed. 100. A vigorous dissenting opinion (62 S. Ct. 148) notes that at the time of the 1911 revision of the Judicial Code, the power of the courts of the United States to protect their judgments was unquestioned and that the revisers of that code noted no change and Congress intended no change.)

Therefore the revised section restores the basic law as generally understood and interpreted prior to the Touey [*sic*] decision.

Changes were made in phraseology.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1954

No. 173

AMALGAMATED CLOTHING WORKERS OF AMERICA and CLEVELAND JOINT BOARD OF THE AMALGAMATED CLOTHING WORKERS OF AMERICA,

Petitioners,

v.

THE R. GUMAN BROTHERS COMPANY,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

REPLY BRIEF FOR PETITIONERS

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No. 173

AMALGAMATED CLOTHING WORKERS OF AMERICA and CLEVELAND JOINT BOARD OF THE AMALGAMATED CLOTHING WORKERS OF AMERICA,

Petitioners,

v.

THE RICHMAN BROTHERS COMPANY,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

REPLY BRIEF FOR PETITIONERS

Introduction

Petitioners submit this Reply Brief for the purpose of showing the insubstantiality of respondent's contention, not considered by either of the courts below, that petitioners foreclosed themselves from seeking federal equitable relief by vainly asking the state court to take cognizance of its lack of jurisdiction. By way of preliminary matter, however, this Reply Brief addresses itself to certain arguments made by respondent in support of its contention that Section 2283 of the Judicial Code is applicable to, and pre-

cludes the maintenance of, the instant proceeding. The issues relating to Section 2283 may have become obscured by virtue of respondent's apparent failure to apprehend (a) the precise arguments urged by petitioners, (b) the plain meaning of this Court's opinion in *Bowles* v. *Willingham*, 321 U. S. 503, and (c) the manifest intent of the Congress which adopted the 1948 revision of the Judicial Code. Petitioners have sought, therefore, to redraw, in broad contour, certain of the principal issues and contentions relating to Section 2283 so as to facilitate this Court's consideration of the underlying questions. It only remains to be added that petitioners concur in the arguments contained in the Brief filed by the National Labor Relations Board as *amicus curiae*.[1]

---

[1] With respect to the suggestion referred to in *International Union* v. *Underwood Corp.*, 35 L. R. R. M. 2340 (C. A. 2), and adverted to in the Board's Brief (p. 25, n. 18) that the Norris-LaGuardia Act (47 Stat. 70, 29 U. S. C. 101, *et seq.*) might conceivably have some relevance to a case of this kind, petitioners have only brief comment to add to the Board's conclusion that the suggestion is without foundation. If there were to be enough substance in the notion to make it worthy of consideration, this Court would not normally pass upon it at this stage, since it has not been treated here (in fact, it has still not been raised by respondent) and has not been considered by or even presented to either of the courts below. *Labor Board* v. *Pittsburgh S. S. Co.*, 337 U. S. 656, 661-662; *Graham* v. *Brotherhood of Firemen*, 338 U. S. 232, 237. But, as the Board has already stated, the Norris-LaGuardia Act has no relevance to the issues in this case. "The Norris-LaGuardia Act of 1932 was aimed at removing the labor injunction that had been used for more than fifty years to deter union organization." Melvin, *The Use of Injunctions in Labor Disputes*, 36 A. B. A. J. 1007 (1950). To make Norris-LaGuardia a bar to federal restraint upon an unlawful proceeding seeking to enjoin organizational picketing "would indeed be to 'turn the blade inward'." *Graham* v. *Brotherhood of Firemen*, *supra*, at 237. In any event, the grant of injunctive relief in *Capital Service, Inc.* v. *Labor Board*, 347 U. S. 501, would seem wholly dispositive of the suggestion. (As noted below, jurisdiction there was asserted on the basis of Section 1337 rather than the National Labor Relations Act;

I

Respondent's analysis of Section 2283, its legislative history, and the relevant decisions, is erroneous.

(a) Adequate answer to the arguments advanced in Respondent's Brief urging the applicability of Section 2283 to a case involving state court encroachment upon the exclusive jurisdiction of the National Labor Relations Board and federal courts is to be found in both the Board's and Petitioners' Briefs (Bd. Br., pp. 18-22; Pet. Br., pp. 28-33). Therefore, it would serve no useful purpose to restate these arguments. It should be noted, however, that respondent seeks to avoid the full impact of this Court's decision in *Bowles* v. *Willingham*, 321 U. S. 503, by attempting to fuse this Court's alternative and independent holdings into a single holding combining features from both (Resp. Br., pp. 11-16). The language of *Bowles* v. *Willingham* is too plain to be so obscured. As heretofore stated in both the Board's and Petitioners' Briefs (Pet. Br., pp. 29-31; Bd. Br., pp. 18-21), *Bowles* v. *Willingham* rests on the following two separate and independent grounds:

> *First*, since "Congress . . . preempted jurisdiction in favor of the Emergency Court to the exclusion of state courts," the "rule expressed in § 265 which is designed to avoid collisions between state and federal authorities . . . thus does not come into play" (321 U. S. at 511);

therefore, the saving provision contained in the National Labor Relations Act with reference to the inapplicability of the Norris-LaGuardia Act did not come into play.)

> *Second*, since the action of the state court also constituted a violation of the federal rent regulations and Section 205 (a) of the Emergency Price Control Act empowered the Price Administrator to seek injunctive relief against such violations in either federal or state courts, the latter section constituted an implied legislative amendment to Section 265.

It is elementary that "where a decision rests on two or more grounds, none can be relegated to the category of *obiter dictum*." *Woods* v. *Interstate Realty Co.*, 337 U. S. 535, 537.

Respondent further seeks to avoid this Court's holding in *Bowles* v. *Willingham* by contending that "Even if the concept that the prohibition of Section 265 did not come into play where there was present an exclusive federal jurisdiction, were to be accepted as an established legal principle with reference to the application of Section 265, there is no basis for accepting a corresponding concept in connection with the application of Section 2283" (Resp. Br., p. 14).

Acceptance of this contention would mean that Congress, in replacing Section 265 with Section 2283 had elected to confine federal injunctions against state court proceedings to even narrower limits than those drawn in the *Toucey* opinion. Actually, as the Reviser's Notes show, the dominant purpose of this aspect of the 1948 revision was precisely to the contrary. It was plainly understood that "the revised section restores the basic law as generally understood and interpreted prior to the Toucy [*sic*] decision."

(H. Rep. No. 308, 80th Cong., 1st Sess., A182; quoted in full in Pet. Br., pp. 49-50.)[2]

(b) Similarly respondent contends that the "statutory qualifications" of Section 265 recognized in *Toucey* v. *New York Life Ins. Co.*, 314 U. S. 118, 132-134, and subsequent decisions do not fall within the first exception of Section 2283 (Resp. Br., pp. 18-21). This argument cannot stand in the face of the legislative history of Section 2283 as reflected in the excerpt from the Reviser's Notes quoted above. Indeed, the Reviser's Notes explicitly record, with reference to the first exception, that, "An exception as to Acts of Congress relating to bankruptcy was omitted and the general exception substituted to cover all exceptions" (H. Rep. No. 308, 80th Cong., 1st Sess., A181).

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[2] Respondent apparently relies upon the language from *Ex parte Collett*, 337 U. S. 55, quoted in its brief (pp. 10-11), as authority for the proposition that no consideration should be given to . . . Reviser's Notes on Section 2283, the legislative history adduced by petitioners to show that Section 2283 was designed to narrow the limitation on federal equity power embodied in Section 265 as that section was construed in *Toucey* v. *New York Life Ins. Co.*, 314 U. S. 118. *Ex parte Collett* is a most insubstantial basis for any argument aimed at discrediting the Reviser's Notes. That decision demonstrates, as noted in the Board's Brief (p. 22, n. 16), that this Court accords great weight to the Notes because of the important role which they played in the legislative consideration of the Judicial Code of 1948. In the *Collett* case, the Court was called upon to construe Section 1404(a) of the Judicial Code. After setting forth the proviso in question, the Court's opinion quotes the full text of the Reviser's Notes on Section 1404(a) and then states that the issue is "whether, despite these expressions, the law remains unchanged" (337 U. S. at 57-58). Noting that the full text of the Reviser's Notes had been printed for Congressional use both in 1946 and 1947 (337 U. S. at 69-70), this Court concluded that the revised section meant what the Reviser's Notes said it meant, and that the law had, in fact, been changed.

In addition, respondent contends that, even if the National Labor Relations Act were a statute within the first exception to Section 2283, the authority to enjoin competing state court action lies solely with the National Labor Relations Board because of "express provisions of the . . . Act vesting the Board with exclusive initial jurisdiction as to all matters covered by its terms" (Resp. Br., p. 19). The exclusive character of the Board's jurisdiction within the confines of the National Labor Relations Act is, of course, beyond proper challenge. But exclusive jurisdiction to carry out the statutory functions entrusted to the Board under the National Labor Relations Act is not the equivalent of exclusive jurisdiction to challenge usurpation by state courts or state administrative tribunal of this exclusive domain. The kind of action here involved is not one of the "matters covered by [the Labor Act's] terms." That the Board is not possessed of "exclusive initial jurisdiction" to challenge state court invasion of the federally preempted field is plain from the fact that a private litigant may successfully challenge such an invasion in a state court proceeding. *Garner* v. *Teamsters Union*, 346 U. S. 485.

In sum, the answer to respondent's contention is that when the Board seeks to enjoin state court proceedings as an encroachment upon its exclusive domain, it must ground its application upon Section 1337, rather than upon the National Labor Relations Act, as the basis of district court jurisdiction. *Capital Service, Inc.* v. *Labor Board*, 347 U. S. 501. Section 1337, which in no way differentiates between actions brought by federal agencies and pri-

vate litigants, is likewise the jurisdictional basis for petitioners' instant action.

(c) Respondent has wholly failed to come to grips with petitioners' argument respecting the second exception to Section 2283. It is contended by petitioners that, in terms of the second exception, the district court jurisdiction which the injunction would aid is the jurisdiction conferred on the federal district court by Section 10(j) of the National Labor Relations Act and that such jurisdiction warrants aid even though neither the Board's jurisdiction nor the federal court's jurisdiction under Section 10(j) has first been invoked. It is urged that the order of the state court denying Amalgamated's motion to dismiss for lack of jurisdiction marked the ripening of the threat to the *potential* jurisdiction of the District Court and, as such, was the proper object of federal restraint. The injunction sought by Amalgamated from the District Court was, therefore, "necessary in aid of its jurisdiction".

The point is plainly illustrated by the language of the Court of Appeals for the First Circuit, invoking the "all writs" section to examine into an otherwise unreviewable order: "Assuming, as petitioner asserts, the invalidity of the order . . . the effect of the order is [to put beyond reach] a case which could eventually come to this court . . .. Therefore we have no doubt that we have power under 28 U. S. C. Section 1651(a), in aid and protection of our potential . . . jurisdiction, to review the order . . .". *In re Josephson* (C. A. 1, No. 4854 Original, December 23, 1954, p. 13; not yet officially reported).

This argument is at no point met by Respondent's Brief.

But if this Court holds that Section 2283 bars the instant action, then, notwithstanding the views expressed in *International Union* v. *Underwood Corp.*, 35 L. R. R. M. 2340 (C. A. 2), the Board will also be unable to secure injunctions against invalid state court proceedings, except in the fortuitous and seldom-to-be repeated circumstance that an employer simultaneously invokes the processes of the Board and the state court. *Capital Service, Inc.* v. *Labor Board*, 347 U. S. 501. For the limitation embodied in Section 2283, like the jurisdiction conferred by Section 1337, if applicable at all, applies without differentiation to private litigants and to the Board. If Section 2283 is a restraint upon petitioners, it is a restraint upon the Board. Affirmance of the conclusion that the District Court was powerless to grant petitioners relief would mean that state court invasions of the federal domain are not subject to effective restraint from any quarter.

II

There is no merit in respondent's contention that petitioners could not seek federal equitable relief after the state court refused to acknowledge that the state court proceeding invaded an exclusively federal domain.

Respondent contends that petitioners foreswore the right to federal equitable relief by moving to dismiss respondent's action in the state court. But, as will

be shown below, the principal authorities cited to support this proposition are cases in which the federal plaintiff had, in effect, elected to litigate in a state court possessed of jurisdiction over the subject matter. It does not follow that a litigant, who is an unwilling defendant in a state court lacking jurisdiction of the subject matter, must decline to assert in the state court the invalidity of that proceeding as the price of admission to the federal courts. In fact, until the state court has first been challenged and has chosen to disregard the limits upon its jurisdiction, it is questionable as to whether the state court defendant can reasonably assert such injury or threat thereof as would warrant federal equitable intervention.[3] Had the state court properly noted its jurisdictional limits and granted petitioners' motion to dismiss for lack of jurisdiction, the instant case would never have arisen. But once the motion was denied—once the state court made this threshold determination and announced its disregard of the limits on state power—there was no further basis for continuation of the assumption that the state court will refrain from trespass upon the federal domain. When petitioners turned for relief to the federal court, the federal judge could no longer properly inquire what justification there was for assuming "that a state court will act without regard to the ap-

[3] See *National Labor Rel. Bd.* v. *New York State Labor Rel. Bd.*, 106 F. Supp. 749, 753 (S. D. N. Y.), wherein it was held that there was no justiciable question as to conflict between state and federal labor relations boards since "the intention of the State Board to determine whether it has jurisdiction does not present any threat to the jurisdiction of the National Board".

plicable law"[4] or "will not respect any controlling limitations upon its power".[5]

The complete inapplicability of the cases relied on by respondent is best illustrated by the first of the citations—the only one of the cited cases decided by this Court—*American Surety Co.* v. *Baldwin*, 287 U. S. 156.

First, the *Baldwin* case was not a preemption case. It was an ordinary negligence action properly tried in the courts of Idaho. The single federal question arose when judgment was entered against petitioner, as guarantor of one of the two defendants, allegedly without notice to petitioner. Petitioner then moved the state court to set aside its allegedly void judgment, but, after the motion was granted, the Idaho Supreme Court reversed on the ground that petitioner should have appealed from the allegedly void judgment rather than moving to vacate it. Petitioner raised its federal question for the first time on petition for rehearing, which was denied. Petitioner then sought federal equitable relief from the judgment, and this Court held on certiorari that petitioner had forfeited its right to a federal injunction by electing to litigate in the state courts which had "jurisdiction over the parties and of the subject matter" and where "an adequate state remedy was available" (287 U. S. at 165).[6]

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[4] *United Electrical R. & M. W.* v. *Westinghouse El. Corp.*, 65 F. Supp. 420, 423 (E. D. Pa.), quoted at page 31 of Respondent's Brief.

[5] *H. J. Heinz Co.* v. *Owens*, 189 F. 2nd 505, 509 (C. A. 9), quoted in *International Union* v. *William D. Baker Co.*, 100 F. Supp. 773, 777 (E. D. Pa.), quoted at page 31 of Respondent's Brief.

[6] Petitioner in *American Surety Co.* v. *Baldwin* also sought certiorari from the state supreme court's denial of rehearing, but the federal question had not been seasonably raised.

Plainly, the decision in *American Surety Co.* v. *Gaskin* is not relevant to the instant litigation. Here petitioners did not pursue an independent state court remedy and then, failing their object in that forum, seek to circumvent further state proceedings by beginning anew in the federal courts. Petitioners, here, without delay or equivocation, announced that the state court was without jurisdiction and seized their first opportunity to persuade the state court to halt its incursion upon the exclusive federal domain. Thereupon, when the state court refused appropriately to delimit its jurisdiction, federal equitable intervention was both necessary and appropriate.[7]

Respectfully submitted.

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LOUIS H. POLLAK,
Assistant Counsel.

March 3, 1955.

[7] It is submitted that the other cases relied on by respondent are also without present relevance:

General Exporting Co. v. *Star Transfer Line*, 136 F. 2nd 329 (C. A. 6) and *United Electrical R. & M. W.* v. *Westinghouse El. Corp.*, 65 F. Supp. 420 (E. D. Pa.), were cases in which the federal courts expressly rejected contentions that federal jurisdiction was exclusive. Moreover, in *General Exporting Co.* v. *Star Transfer*, the "suit had proceeded to pronouncement of judgment

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In the Supreme Court of the United States

OCTOBER TERM, 1954.

No. 173.

AMALGAMATED CLOTHING WORKERS OF AMERICA AND CLEVELAND JOINT BOARD OF THE AMALGAMATED CLOTHING WORKERS OF AMERICA,

Petitioners,

vs.

THE RICHMAN BROTHERS COMPANY,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT.

BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

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ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT.

BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

QUESTIONS PRESENTED.

I.

Was the Federal District Court prohibited by statute, 28 USC Section 2283, from granting a preliminary injunction against prosecution by respondent of its action in a state court to enjoin petitioners and others from picketing and recurrently obstructing the entrances of stores of respondent?

II.

Did the Federal District Court abuse its discretion in denying a preliminary injunction in such case where the sole ground for the injunction presented the same issue as that previously determined in respondent's favor in the state court action by the overruling of a demurrer to the petition in the state court action, the sole ground of the demurrer being that the state court was without jurisdiction?

STATEMENT.

The statement on pages 3-6 of the petition for the writ is deemed sufficient except as herein corrected and enlarged.

The gist of respondent's petition in the state court action is not merely the conspiracy, as stated on page 4 of the petition for the writ, but is that the defendants in the state court action, in carrying forward the conspiracy, were causing respondent to be irreparably damaged by the picketing of, and the recurrent obstructing of entrances to, stores of respondent (R. 8a-11a). In the petition in the state court action it is further alleged in substance that the picketing was done with knowledge on the part of the defendants therein that it is a commonly accepted belief acted upon by a substantial part of the general public that no person may cross a picket line without permission of the picketing union (R. 10a).

The statement in the petition for the writ (p. 3) to the effect that the instant case arose out of Amalgamated's attempt to organize respondent's manufacturing employees and that the picketing was a part of such organizational campaign is not supported by the record herein. More-

over, it is not in accord with petitioners' answer (R. 17a-21a) in the state court action wherein, after alleging in effect that no members of the petitioners' union are employed in any plant or store of respondent and that respondent is in direct competition with manufacturers who employ members of the petitioners' union, it is further alleged that the picketing has been carried on "for the sole purpose of disseminating the information to the members of organized labor and to the public who are in sympathy with organized labor that the plaintiff does not employ union labor, and that the plaintiff and its employees are in competition with members of this union." (R. 19a.) In the petition for the writ (footnote 3, p. 7) it is stated that "Amalgamated's picketing was part of a campaign of peaceful persuasion—apprising the public of Richman's non-union status and urging the public to refrain from purchasing Richman's products."

Although the decision of the Court of Appeals, as well as that of the District Court, is grounded solely on Section 2283, the Court of Appeals, in its opinion (R. 154a-155a), expressly recognizes that there is collaterally involved a question, which the court did not decide, as to whether the subject matter of respondent's petition in the state court action is within the exclusive jurisdiction of the National Labor Relations Board, notwithstanding this Court's decision in *Garner v. Teamsters Union*, 346 U. S. 485. This collateral question is presented in the petition for the writ (pp. 6-9) as the first reason for the granting of the writ. Only the denial of a preliminary injunction being involved herein, the record is without evidence upon which the collateral question may properly be resolved.

ARGUMENT AGAINST GRANTING THE WRIT.

I.

The Preliminary Injunction Was Properly Denied Because of the Prohibition in 28 USC Section 2283.

The following is a copy of the statute referred to:

> "A court of the United States may not grant an injunction to stay proceedings in a state court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments."

In the petition for the writ there are only two arguments with respect to the statute. The first is that the statute is inapplicable to a case involving state court invasion of exclusive federal jurisdiction. The second, alternative to the first, is to the effect that the second exception in the statute permits the issuance of the requested injunction (Pet. for writ, pp. 10-16).

Since petitioners make no claim that either of them apply herein, the first and third exceptions to the operation of the prohibition of the statute need only brief attention. The first exception, by its terms, applies only when the granting of the injunction is "expressly authorized by Act of Congress." The absence herein of any such act prevents reliance on that exception. The third exception, by its terms, applies only "where necessary * * * to protect or effectuate its judgments." Aside from denying a stay and a preliminary injunction herein, the only judgment rendered in this controversy by the District Court is its order remanding the removed action to the state court "for further proceedings" (R. 147a) therein. Manifestly, the requested preliminary injunction could not be necessary to protect or effectuate the judgment of remand,—on the contrary, it would result in a defeat thereof.

The second exception, by its terms, removes the prohibition of the statute against a court of the United States granting an injunction to stay proceedings in a state court only "where necessary in aid of its jurisdiction." Manifestly, because of its wording, this exception can have application only where the injunction is necessary in aid of the jurisdiction of the court granting it and can have no application to the granting of an injunction necessary in aid of the jurisdiction of an administrative agency such, for example, as the National Labor Relations Board. It is this express limitation as to the application of the second exception which defeats petitioners' second argument directed to the statute.

The sole relief sought by petitioners in the District Court is injunctive relief. Petitioners have not sought such relief on the ground that it is necessary in aid of any jurisdiction of the District Court. In fact, they state in their petition for the writ (p. 5) that they asked the District Court to enjoin respondent from proceeding with its state court action "on the ground that Richman's petition complained of matters within the exclusive jurisdiction of the National Labor Relations Board and that the state court was therefore without jurisdiction." It follows that if the injunctive relief sought herein were necessary in aid of any jurisdiction it would have to be the jurisdiction of the Board, not that of the District Court.

This is neither an action to review an order of the National Labor Relations Board, nor is it an action brought on application of the Board or any agent thereof. It is an action by petitioners as private parties on their own behalf, solely for injunctive relief with respect to a labor matter, and on the sole ground that the matter is within the exclusive jurisdiction of the Board. There is no provi-

sion in the National Labor Relations Act, as amended (29 USC (Supp.) Sections 151, et seq.), for the bringing of any such action by private parties. The act contains express provisions determinative of the occasions and instances when, and the conditions under which, a federal court may act with respect to a labor matter which is within the exclusive jurisdiction of the Board, none of which have or are claimed to have any application herein.

If, therefore, as contended for by petitioners, the subject matter of the action in the state court is within the exclusive jurisdiction of the Board, then, upon the same reasoning which allegedly deprives the state court of jurisdiction and vests it exclusively in the Board, the District Court is without any power or jurisdiction, upon application by petitioners, to stay by injunction the state court action. It is from the provisions of the National Labor Relations Act, as amended, alone, that the Board derives all of its exclusive jurisdiction with respect to labor matters covered by the act. It is because of the same provisions that this Court has several times pointed out that not only state courts but also federal courts are deprived of jurisdiction with respect to matters within the exclusive jurisdiction of the Board, subject to the right and duty on the part of specified federal courts to act in such matters by way of review and enforcement of orders by the Board and by way of granting relief on applications by the Board or its agent, as provided for in the act (29 USC (Supp.) Sections 160 (e), (f), (j), and (l)).

In *Garner v. Teamsters Union*, 346 U. S. 485, this Court, in referring to the fact that the act provides a complete means for the handling of labor matters covered thereby, said (p. 489): "The power and duty of primary decision lies with the Board, not with us," then concluded

as follows (p. 491): "The same reasoning which prohibits federal courts from intervening in such cases, except by way of review or on application of the federal Board precludes state courts from doing so," and cited *Myers v. Bethlehem Shipbuilding Corp.*, 303 U. S. 41 and *Amalgamated Utility Workers v. Consolidated Edison Co.*, 309 U. S. 261.

The question in the *Myers* case was whether a federal district court had equity jurisdiction, upon application by an employer, to enjoin the National Labor Relations Board from hearing a complaint against the employer on the ground, *inter alia*, that the National Labor Relations Act was inapplicable to its business and the Board was without jurisdiction. This Court held that initial jurisdiction of labor matters covered by the act is vested by the act exclusively in the Board; that the District Court had, therefore, no jurisdiction or power to grant the injunction; and that the employer had an adequate remedy by virtue of provisions for appeal as to any order made by the Board. Upon the same reasoning if, as petitioners herein claim, the subject matter of respondent's petition in the state court is within the exclusive jurisdiction of the Board, then, by reason of the provisions of the National Labor Relations Act, as amended, the District Court has no power or jurisdiction in this case and petitioners should be left to their remedy of appeal from any order that may be made in the state court action of respondent. It was through such a course of appeal that the *Garner* case came to this Court.

Sufficiently comparable factually with the instant case to merit their attention herein are: *International Union, etc. v. William D. Baker Co.*, 100 F. Supp. 773 (D. C. E. D. Pa., 1951); *United Electrical R. & M. W. v. Westinghouse*

Electric Corp., 65 F. Supp. 420 (D. C. E. D. Pa., 1946); and *Davega-City Radio, Inc. v. Boland*, 23 F. Supp. 969 (D. C. S. D. N. Y., 1938). In each of those cases (1) private parties were seeking injunctive relief, (2) claiming that the state court had no jurisdiction to proceed because federal legislation had removed it—in the latter two cases the legislation was the National Labor Relations Act, and (3) the jurisdiction of the federal district court was invoked solely for the purpose of preventing further proceedings in the state court and not in aid of jurisdiction of the federal court otherwise invoked. In the case first above cited it was held that Section 2283, and in the other two it was held that Section 265 of the Judicial Code, 28 USC 379 (of which Section 2283 is a 1948 revision) prohibited a federal district court from issuing an injunction to stay proceedings in a state court.

For support to their argument that the instant case is within the second exception to Section 2283 (Pet. for writ, pp. 13-16), petitioners rely upon *NLRB v. New York State Labor Relations Board*, 106 F. Supp. 749 (S. D. N. Y., 1952) and *Capital Service, Inc. v. NLRB*, 347 U. S. 501. In that argument petitioners also cite *United Construction Workers v. Laburnum*, 22 U. S. L. Week 4289 (June 7, 1954), and comment upon the *Garner* case, but in neither of the latter two cases was Section 2283 involved. Each of the first two cases referred to is distinguishable from the instant case and for the same reason. In each thereof the National Labor Relations Board sought injunctive relief in a federal court in pursuance of provisions of the National Labor Relations Act. In the instant case, however, petitioners, as private parties, seek injunctive relief in the District Court upon the sole claim that the Board has exclusive jurisdiction of the state court action of respondent.

But the National Labor Relations Act, as amended, contains no provision authorizing any such action by private *parties, as distinguished from the Board.*

Petitioners' only other argument relating to Section 2283 is that the prohibition of the statute is inapplicable to cases involving state court invasion of exclusive federal jurisdiction (Pet. for writ, pp. 10-13). In support of this argument petitioners rely upon statements in the opinions in *Toucey v. New York Life Ins. Co.*, 314 U. S. 118 and in *Bowles v. Willingham*, 321 U. S. 503, to the effect that Section 265 of the Judicial Code (28 USC Section 379) does not apply to a situation involving exclusive federal jurisdiction. The decisional law and the differences in the wording of Sections 265 and 2283, however, disclose that such reliance by petitioners has been misplaced.

In this connection it is to be observed, as stated in the petition for the writ (p. 11), that Section 2283 is a 1948 revision of Section 265 and that the latter prohibited all injunctions against state court proceedings, with the single exception of "cases where such injunction may be authorized by any law relating to proceedings in bankruptcy." As will be seen, exceptions to Section 265, implied by construction and by subsequent legislation, including that involved in the *Bowles* case, were recognized. Section 2283, however, came into effect on June 25, 1948, which was subsequent to the enactment of the Labor Management Relations Act amending the National Labor Relations Act and subsequent to the decisions in the *Toucey* and *Bowles* cases, and by its terms evidences legislative intent to permit only express exceptions thereto.

As stated in the *Bowles* case (p. 510), this Court in the *Toucey* case considered the history of Section 265 and the exceptions which have been engrafted on it and therein

listed the few Acts of Congress passed since its first enactment in 1793 which have operated as implied legislative amendments to it. From such review in the *Toucey* case, aided by the decision in the companion case of *Southern Railway Co. v. Painter*, 314 U. S. 155, it is to be seen that this Court has recognized only one non-statutory implied exception to the operation of Section 265 in litigation involving private parties, i.e., that pointed out in the *Toucey* case (pp. 134-135) in cases where a federal court has power to protect its jurisdiction of a res acquired prior to the attempted assertion by a state court of jurisdiction over the same res. From such review it further appears that this Court did not recognize that there ever existed any non-statutory implied exception to Section 265 in a case where it is claimed that the state court has no jurisdiction of an action over which it has asserted jurisdiction.

The *Bowles* case is distinguishable from the case at bar in that essentially the holding therein is that Section 205(a) of the Emergency Price Control Act of 1942 created an implied exception to Section 265. See *Fleming v. Rhodes*, 331 U. S. 100, 108. Moreover, in the *Bowles* case, the action to enjoin state court proceedings was by the Price Administrator, an agent of the United States, acting in pursuance of provisions of the Emergency Price Control Act of 1942 (50 USC (Supp.) Sec. 925 (2)), which was enacted subsequently to Section 265. On the other hand, the instant action is one by petitioners, as private parties, to enjoin respondent from proceeding in a state court action on the sole alleged ground that the subject matter of the state court action is within the exclusive jurisdiction of the National Labor Relations Board, and there is no provision in the National Labor Relations Act, as amended, authorizing petitioners so to proceed.

Section 2283 having been enacted subsequently to amendment of the National Labor Relations Act by the Labor Management Relations Act, manifestly there can be no proper basis for any claim to the effect that the National Labor Relations Act, as amended, carries with it an implication that such act constitutes a legislative amendment of Section 2283. It is significant that by the terms of the first express exception provided in Section 2283 the prohibition of the Section does not apply to stay state court proceedings where "expressly authorized by Act of Congress," because it would appear therefrom that subsequent legislation may no longer be deemed to impliedly remove the prohibition against a stay of state court proceedings, as was held, among others, in the *Bowles* case.

Whether the subject matter of respondent's petition in the state court is within the exclusive jurisdiction of the National Labor Relations Board, as contended for by petitioners (Pet. for writ, pp. 6-9), raises a collateral question not essential to any question before this Court. As pointed out in the opinion of the appellate court (R. 154a-155a), such collateral question is not within the scope of the decision in the *Garner* case, because foreign to that decision are the allegations in respondent's petition in its state court action to the effect that the picketing therein complained of is recurrently obstructing the entrances to stores of respondent. Furthermore, the purpose of such picketing, as alleged in the answer of petitioners in the state court action and previously herein stated (*supra*, p. 3), presents an issue in respondent's state court proceedings which was not present in the *Garner* case.

II.

The Denial By the District Court of the Preliminary Injunction Does Not Constitute an Abuse of Discretion.

The petition for the writ (pp. 4-5) discloses that petitioners moved the state court to dismiss respondent's action on the ground that the action was exclusively within the purview of the National Labor Relations Board and that the state court was therefore without jurisdiction. It further discloses that, after that motion (treated as a demurrer under Ohio procedure) was denied, petitioners instituted this action to enjoin respondent from further prosecution of its state court action on the same ground, i.e., that respondent's petition complained of matters within the exclusive jurisdiction of the Board and that the state court was therefore without jurisdiction.

Upon the conceded facts above stated, the denial of a preliminary injunction herein did not constitute an abuse of discretion. Under the circumstances, the case at bar constitutes an attempt to obtain, by an independent action, appellate review of a decision by the state court. This, the courts do not permit. *American Surety Co. v. Baldwin*, 287 U. S. 156, 164-167.

A closely comparable factual situation was present in *Davega-City Radio, Inc. v. Boland*, 23 F. Supp. 969 (D. C. S. D. N. Y., 1938), in which an employer was attacking the jurisdiction of a state board and certain courts. After the federal district court said it was powerless to grant the requested injunction because of Section 2283, it further said (p. 970):

> "There is also a further reason why the suit must be dismissed, namely, the principle that a decision of a state court may not be reviewed by bill in equity in a federal court. American Surety Co. v. Baldwin, 287 U. S. 156, 164. * * *; Lynch v. International Banking

> Corp., 9 Cir., 31 F. 2d 942, certiorari denied, 280 U. S. 571, * * *; Furnald v. Glenn, 2 Cir., 64 F. 49, 54; Ritholz v. North Carolina State Board, D. C. M. D. N. C., 18 F. Supp. 409, 413. Here the plaintiff has presented to the state court the same questions as to the jurisdiction of the state Board that it wishes this court to decide. The issue having been decided adversely to it, its remedy is appeal through the appropriate state courts and, if necessary, review by the Supreme Court of the United States. *It cannot obtain a review by this independent suit in the federal court.*"

See also, *United Electrical R. & M. W. v. Westinghouse Electric Corp.*, 65 F. Supp. 420 (D. C. E. D. Pa., 1946), and *International Union, etc. v. William D. Baker Co.*, 100 F. Supp. 773 (D. C. E. D. Pa., 1951).

The principle was applied to prevent indirect appellate review, by this means, of an interlocutory decree in *Furnald v. Glenn*, 64 Fed. 49 (C. C. A. 2nd, 1894). See the general discussion in *General Exporting Co. v. Star Transfer Line*, 136 F. (2d) 329 (C. C. A. 6, 1943).

CONCLUSION.

For the foregoing reasons the petition for a writ of certiorari in this case should be denied.

Respectfully submitted,

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In the Supreme Court of the United States

OCTOBER TERM, 1954.

No. 173.

AMALGAMATED CLOTHING WORKERS OF AMERICA and CLEVELAND JOINT BOARD OF THE AMALGAMATED CLOTHING WORKERS OF AMERICA,

Petitioners,

vs.

THE RICHMAN BROTHERS COMPANY,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT.

BRIEF FOR RESPONDENT.

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In the Supreme Court of the United States

OCTOBER TERM, 1954.

No. 173.

AMALGAMATED CLOTHING WORKERS OF AMERICA and CLEVELAND JOINT BOARD OF THE AMALGAMATED CLOTHING WORKERS OF AMERICA,

Petitioners,

vs.

THE RICHMAN BROTHERS COMPANY,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT.

BRIEF FOR RESPONDENT.

QUESTIONS PRESENTED.

I.

Was the Federal District Court prohibited by statute, 28 USC Section 2283, from granting a preliminary injunction against prosecution by respondent of an action by it in a state court to enjoin petitioners and others from picketing and recurrently obstructing the entrances of stores of respondent?

II.

Should petitioners, having submitted to the State Court the question as to the exclusive jurisdiction of the Labor Board, and the issue having been decided adversely to them, be permitted in the case at bar to obtain in the District Court a review of the decision of the State Court?

STATEMENT.

The statement on pages 2-6 of the brief for petitioners is sufficient except as herein corrected and enlarged upon.

In denying petitioners' preliminary injunction (R. 27-28), the District Court made and entered findings of fact and conclusions of law (R. 25-27). Paragraph 11 (R. 27) of such findings discloses that petitioners submitted no evidence in support of their motion for a preliminary injunction. Aside from the allegations in petitioners' complaint in the District Court (R. 16-22) and allegations in the defendants' answer filed in the state court action (R. 11-13), there is no support for the statements in petitioners' brief (p. 3) that the instant case arises out of an organizational campaign of Amalgamated and that the picketing complained of by respondent was wholly peaceful picketing.

The instant case was filed immediately after and as the sole result of the overruling by the State Court of petitioners' motion to dismiss respondent's action therein (R. 26-27, Findings 7, 8 and 9).

In respondent's petition in the state court action (R. 7-8) there are, among others, allegations to the effect that the defendants were causing recurrent picketing demonstrations to be staged immediately in front of the main entrances of picketed stores, [1] as many as twenty persons, at times more, who, singing and shouting, milling about and carrying long poles and balloons on long cords, were creating confusion at, and obstructing the entrances of, the stores so picketed.

The gist of respondent's petition in the state court action is not merely the conspiracy, as is stated on page 4 of petitioners' brief, but is that the defendants in carrying forward the conspiracy, were causing respondent to be

irreparably damaged by the picketing of, and the recurrent obstructing of entrances to, stores of respondent (R. 6-9). In the petition in the state court action it is further alleged in substance that the picketing was done with knowledge on the part of the defendants that it is a commonly accepted belief, acted upon by a substantial part of the general public, that no person may cross a picket line without permission of the picketing union (R. 8).

It is alleged in respondent's petition in the state court action that the picketing complained of took place at the entrances to respondent's stores, all of which were miles removed from either of respondent's factories (R. 4); that neither Amalgamated nor any other labor organization is a representative for purposes of collective bargaining of respondent's employees; that no notice has been given to respondent that defendant Amalgamated or any other labor organization claims to be such representative or to be entitled to be recognized or dealt with as such by respondent; that there was no strike of any of respondent's employees or any labor dispute between respondent and any of its employees (R. 6); and that the picketing complained of had been going on since March 31, 1951 (R. 7). Respondent's action in the state court was not filed until October 18, 1952 (R. 25, Finding 2). As appears in petitioners' brief (p. 6) the picketing complained of was not enjoined by the State Court until after the instant case had entered its appellate phase, i.e., after the order of March 25, 1953, denying the preliminary injunction (R. 27-28).

Respondent's petition in its state court action contains no allegation to the effect that any of the defendants therein were restraining or coercing any of respondent's employees, or to the effect that any of the defendants were causing or attempting to cause respondent to discriminate

against any employee in violation of subsection 8(a)(3) of the National Labor Relations Act as amended.

Respondent's petition in its state court action (R. 9) contains a second cause of action in which it is alleged in substance that the carrying out of the conspiracy described in the first cause of action constitutes a continuing unreasonable restraint of trade in violation of the Ohio anti-trust statutes and of the common law of Ohio.

Although the decision of the Court of Appeals, as well as that of the District Court, is grounded solely on Section 2283, the Court of Appeals, in its opinion (R. 30-31) expressly recognizes that a collateral question is involved, which it did not decide. That question is as to whether the subject matter of respondent's petition in the state court action is within the exclusive jurisdiction of the National Labor Relations Board, in view of this Court's decision in *Garner v. Teamsters Union*, 346 U. S. 485.

It is true, as repeatedly emphasized in petitioners' brief (pp. 6, 11, 16, 20, 37, 41), that after the District Court had overruled petitioners' motion for a preliminary injunction, the State Court heard and granted respondent's motion for a temporary injunction against the picketing of respondent's stores. This fact does not appear in the record herein. For its ascertainment, *Richman Bros. Co. v. Clothing Workers*, 51 Ohio Opinions, 145, is cited in petitioners' brief, page 6. This same citation at pages 146, 147 and 150 discloses the facts to be that in the state court hearing the defendants therein, including the petitioners herein, took the position that there was no dispute between the Company and Amalgamated and that the defendants therein were causing the stores to be picketed solely for purposes of advertising the union label and promoting the sale of clothing bearing the union label.

SUMMARY OF ARGUMENT.

I. The preliminary injunction was properly denied because of the prohibition in Section 2283. Being clear, the statute must be given effect in accordance with the terms thereof, in the absence of any overriding Congressional intention to the contrary. Since Section 2283 was enacted after the National Labor Relations Act had been amended by the Labor Management Relations Act, there is no basis for inferring any Congressional intention that it as distinguished from its predecessor, Section 265, should have no application, or should not be enforced in accordance with its terms, in event the subject matter of the state court action were within the exclusive jurisdiction of the National Labor Relations Board.

Section 2283 specifies the only exceptions to the prohibition of the statute, and through the exceptions provides an adequate and serviceable method of preventing the statute's operation from thwarting or impairing enforcement of federal legislative acts, both present and future, and whether the jurisdiction provided for in such acts be exclusively federal or concurrently federal and state. *Capital Service Inc. v. Labor Board*, 347 U. S. 501. By reason of its ancient enactment and its single specified exception, Section 265 presented a wholly different situation with reference to its enforcement, one giving rise to implied amendments or exceptions. *Toucey v. New York Life Insurance Co.*, 314 U. S. 118 and *Bowles v. Willingham*, 321 U. S. 503.

The case at bar is not within any of the three specified exceptions, so it is, therefore, within the prohibition of Section 2283. The first exception does not apply because Congress has not given the requisite express, or even any implied, authorization for the granting of the requested injunction—*Capital Service, Inc. v. Labor Board*, 347 U. S.

501—especially in this action brought by private parties, as distinguished from the National Labor Relations Board which is vested with exclusive initial jurisdiction respecting all matters covered by the National Labor Relations Act, as amended. *Garner v. Teamster Union*, 346 U. S. 485; *Myers v. Bethlehem Shipbuilding Corp.*, 303 U. S. 41; *Amalgamated Utility Workers v. Consolidated Edison Co.*, 309 U. S. 261; and *International Union v. Underwood Corp.* (C. A. 2, No. 182, Jan. 6, 1955) (not yet officially reported), 35 L. R. R. M. 2340.

The second exception does not apply because this action meets neither of the two requisites thereof. First, because of the word "its" in this exception, the jurisdiction to be aided must be the jurisdiction of the District Court, and upon authority of each of the cases last above cited the District Court is without jurisdiction of this action brought by private parties as distinguished from the Board. Second, under the second exception, the granting of the requested injunction must "be necessary in aid of" the District Court's jurisdiction, and, since petitioners' action is the only one before the District Court involving respondent's action and is solely one for the requested injunction, even if it be assumed that the District Court has jurisdiction of this action, still the granting of the requested injunction could not "be necessary in aid of" such assumed jurisdiction so to act. Cf. *Capital Service, Inc. v. Labor Board*, 347 U. S. 501.

The third exception is without application because there exists no judgment, or even claim of judgment, of the District Court, which could be protected or effectuated by the granting of the requested injunction.

II. Petitioners, having submitted to the state court the question as to the exclusive jurisdiction of the Labor Board, and the issue having been decided adversely to

them, should not be permitted in the case at bar to obtain in the District Court a review of the decision of the state court. *American Surety Co. v. Baldwin*, 287 U. S. 156, 164-167, *Davega-City Radio, Inc. v. Boland* (S. D. N. Y.), 23 F. Supp. 969; *United Electrical, etc. v. Westinghouse Electric Corp.* (E. D. Pa.), 65 F. Supp. 420; *International Union v. William D. Baker Co.* (E. D. Pa.), 100 F. Supp. 773; *Furnald v. Glenn* (C. A. 2), 64 Fed. 49; and *General Exporting Co. v. Star Transfer Line* (C. A. 6), 136 F. (2d) 329.

ARGUMENT.

I.

THE PRELIMINARY INJUNCTION WAS PROPERLY DENIED BECAUSE OF THE PROHIBITION IN SECTION 2283, TITLE 28, UNITED STATES CODE.

A. Introductory.

Section 2283 provides:

> "A court of the United States may not grant an injunction to stay proceedings in a state court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments."

The statute became effective January 25, 1948, and is a revision[1, 2] of Section 265 of the Judicial Code of 1911.

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[1] *Moore's Commentary on the U. S. Judicial Code* (1949), 395-396 is the source of the following history of the statute. Section 5 of the Act of March 2, 1793, provided in part:

> "* * * nor shall a writ of injunction be granted to stay proceedings in any court of a state." 1 Stat. 333, 334.

This was carried forward as Section 720 of the Revised Statutes of 1874, which was as follows:

> "The writ of injunction shall not be granted by any court of the United States to stay proceedings in any court of a

(*Continued on following page*)

Petitioners' action is one to enjoin respondent from proceeding in its state court action on the ground that the subject matter thereof is within the exclusive jurisdiction of the National Labor Relations Board (R. 16-21; Ps.' Br. p. 5). Jurisdiction of the District Court was by the complaint (R. 16-21) invoked solely under Section 1337[3] of the Judicial Code (28 USC Section 1337) and Section 1651[3] of the Judicial Code (28 USC Section 1651).

It is respondent's position that in view of the clear wording of Section 2283, the prohibition of this statute necessarily came into play because the instant action is not within any of the three exceptions specified therein.

Much of the argument in petitioners' brief is devoted to collateral matters[4] not necessary to a determination of

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(Continued from preceding page)

State, except in cases where such injunction may be authorized by any law relating to proceedings in bankruptcy."

which became Section 265 of the Judicial Code of 1911, former 28 USC Section 379, without any change, and no change was made until the Code revision in 1948, as the result of which Section 2283 was enacted.

[2] The reviser's notes on Section 2283 (H. Rep. No. 308, 80th Cong., 1st Session, A-181—A-182) are set forth in the Appendix to petitioners' brief, pages 49-50.

[3] Copies of Sections 1337 and 1651 of the Judicial Code are set forth in the Appendix to petitioners' brief (p. 33).

[4] Whether a "deplorable situation" may result if labor unions are prevented by Section 2283 from enjoining state court invasions of the jurisdiction of the National Labor Relations Board, as is contended at length in petitioners' brief (pp. 19-28, 41-42), is a matter for presentation to Congress, not to the courts.

Whether the subject matter of respondent's state court action is within the exclusive jurisdiction of the National Labor Relations Board, as contended in petitioners' brief (pp. 6; 12-19), is a question not directly involved in this proceeding. It was not decided either by the District Court or by the Court of Appeals and in the opinion of the latter it was referred to as being "collaterally involved" (R. 30-31). An answer thereto being unnecessary in determining any question before the Court in this proceeding, this collateral question will receive no further con-

the applicability of Section 2283. As disclosed therein (pp. 19, 28-42), petitioners' brief actually sets forth only two contentions directed at Section 2283. The first is that the statute has no application herein because the subject matter of respondent's petition in the state court action is allegedly within the exclusive jurisdiction of the National Labor Relations Board (Ps.' Br. pp. 28-33). The second is that, in any event, the instant action falls within either the first or the second exception specified in the statute (Ps.' Br. pp. 33-42).

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sideration in this brief, aside from stating some of the reasons which distinguish the situation herein from that in *Garner v. Teamsters Union*, 346 U. S. 485.

Set forth in respondent's state court petition are allegations materially different from those involved in the *Garner* case. For example, there are the allegations referred to in the opinion of the Court of Appeals (R. 31) to the effect that the defendants were causing recurrent picketing demonstrations to be staged immediately in front of the main entrances to picketed stores, by as many as twenty persons, at times more, who, singing and shouting, milling about and carrying long poles and balloons on long cords, were creating confusion at and obstructing the entrances of, the stores so picketed. There are also the allegations in respondent's second cause of action complaining that the carrying out of the conspiracy by the picketing referred to constituted an unreasonable restraint of trade in violation of anti-trust statutes and common law of Ohio.

There are no allegations to the effect that any of the defendants were restraining or coercing any of respondent's employees, or were causing or attempting to cause respondent to encourage membership in their union by "discrimination in regard to hire or tenure of employment or any term or condition of employment," in violation of subsection 8 (a) (3) of the National Labor Relations Act, as amended. The petition does not specify that defendants made any demands on respondent which disclose any particular means by which it was to force its employees to join the union. In this respect the case resembles *Auto Workers v. Wisconsin Board*, 336 U. S. 245 (*infra*, p. 17). The absence of any such allegations from respondent's state court petition prevents the subject matter thereof from falling within the purview of either Section 8 (b) (1) or Section 8 (b) (2) of the National Labor Relations Act, as amended, and consequently distinguishes respondent's state court action from the corresponding state court action involved in the *Garner* case.

B. Under the Terms of Section 2283 the Prohibition of the Statute Has Application Unless the Instant Case is Within One or More of the Three Exceptions Specified Therein.

1. Section 2283 Should be Given Effect in Accordance With the Terms Thereof.

The validity of the statute has not been challenged. The statute is in unmistakably clear language. Directly following the statement of the prohibition are provided the three exceptions which alone will preclude its application. Neither the presence of exclusive federal jurisdiction nor the absence of concurrent jurisdiction on the part of state and federal courts is among the three specified exceptions. To hold that the statute is without application where there is present an exclusive federal jurisdiction would be violative of elementary principles of construction repeatedly adhered to by this Court.

In *Toucey v. New York Life Insurance Co.*, 314 U. S. 118, the Court refused to read into Section 265 an exception which would render inapplicable the prohibition of the statute to so-called relitigation cases therein under consideration. In *Pillsbury v. United Engineering Co.*, 342 U. S. 197, 199, it was said:

> "We are not free, under the guise of construction, to amend the statute by inserting therein before the work 'injury' the word 'compensable' so as to make 'injury' read as if it were 'disability.' Congress knew the difference between 'disability' and 'injury' and used the words advisedly."

The following is an excerpt from *Ex Parte Collett*, 337 U. S. 55, 61:

> "Petitioner's chief argument proceeds not from one side or the other of the literal boundaries of Sec. 1404 (a), but from its legislative history. The short

answer is that there is no need to refer to the legislative history where the statutory language is clear. 'The plain words and meaning of a statute cannot be overcome by a legislative history which, through strained processes of deduction from events of wholly ambiguous significance, may furnish dubious bases for inference in every direction.' *Gemsco v. Walling*, 324 U. S. 244, 260 (1945). This canon of construction has received consistent adherence in our decisions."

In footnote 12 to the concluding sentence of the last above quoted excerpt, the Court further said, page 61:

"The rule as to statutory revisions is the same. * * *"

2. The Contention That the Statute Has No Application Where There is Present an Exclusive Federal Jurisdiction is Unsound.

Quoted in petitioners' brief[7] are excerpts from a few decisions of this Court upon which petitioners predicate the argument that Sections 265 and 2283 have never had any application where there was present an exclusive federal jurisdiction. Respondent maintains that this Court has never so held, at least as to Section 2283, and that even if it has so held as to Section 265, there is no proper basis for any such holding as to Section 2283 in the case at bar.

The review in the *Toucey* case of this Court's decisions involving Section 265 indicates that the Court was apparently of the opinion that it had never so held, otherwise mention thereof would have been made in such review. Of the cases quoted from in petitioners' brief and referred to in footnote 5 hereof, only the *Boucles* case and the *Capital Service* case were decided after the *Toucey* case.

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[7] Page 18 from *Capital Service Inc. v. Labor Board*, 347 U. S. 501, 504; page 28 from *Wells Fargo & Co. v. Taylor*, 254 U. S. 175, 183; page 29 from *Hale v. Bimco Trading Co.*, 306 U. S. 375, 378; and page 30 from *Boucles v. Willingham*, 321 U. S. 503.

That the *Bowles* case constitutes no such holding is demonstrated by this Court's own views as to what had been held in the *Bowles* case, as stated in the following excerpt from *Porter v. Dicken*, 328 U. S. 252, 254-255:

> "While we realize that Sec. 265 embodies a long-standing governmental policy to prevent unnecessary friction between state and federal courts, *Toucey v. New York Life Insurance Co.*, 314 U. S. 118, we still hold as we held in *Bowles v. Willingham*, 321 U. S. 503, that Sec. 205 of the Price Control Act which authorizes the Price Administrator to seek injunctive relief in appropriate courts, including federal district courts, is an implied legislative amendment to Sec. 265, creating an exception to its broad prohibition. This is true because Sec. 205 authorizes the Price Administrator to bring injunction proceedings to enforce the Act in either state or federal courts, and this authority is broad enough to justify an injunction to restrain state court evictions. But if Sec. 265 controls, as the District Court held, the Administrator here could not proceed in the federal court, since there is a proceeding pending in a state court. Since the provisions of the Price Control Act, enacted long after Sec. 265, do not compel the Administrator to go into the state courts but leave him free to seek relief in the federal courts, he was not barred by Sec. 265 from seeking an injunction to restrain an unlawful eviction. Cf. *Hale v. Bimco Trading, Inc.*, 306 U. S. 375."

and the following footnote on page 255, in which the court further said:

> "An alternative reason given for the decision in the Willingham case was that, since the state court there was attempting to enjoin the Administrator from performing his duties under the Act, the District Court had power both under Sec. 205 (a) of the Act and Sec. 24 (1) of the Judicial Code to protect the exclusive federal jurisdiction which Congress had granted. But

> our opinion did not, as the District Court thought, depend entirely on this alternative ground."

It is obvious that the situation in the *Boucles* case was different from that in the instant case. Therein the Administrator sought to enjoin the state proceeding on the ground that the state court was attempting to enjoin him from performing his duties under the Act vesting him with exclusive jurisdiction. Herein petitioners, as private parties, seek to enjoin the state court proceeding on the ground that the subject matter of respondent's petition in the state court action is within the exclusive jurisdiction of the National Labor Relations Board.

Even if the *Boucles* case were to be accepted as a holding that, upon the facts therein, Section 265 was without application by reason of the absence of any concurrent federal and state court jurisdiction, in considering the effect of the conclusion therein reached as applied to the instant case, it should be considered in connection with *Capital Service, Inc. v. Labor Board*, 347 U. S. 501. In the latter case the National Labor Relations Board by action under Section 10 (1) of the National Labor Relations Act, as amended, and after Section 265 had been succeeded by Section 2283, sought and obtained an injunction against the prosecution of a state court action by an employer who had also filed charges with the Board involving a labor union defendant in the state court action. In affirming the Board's right to the injunction, this Court held that the action therein was within the second exception of Section 2283 and, immediately after referring expressly to the *Boucles* case and others, said (p. 505):

> "We do not stop to consider the many questions which have been propounded under this newly worded provision of the Code. One alone suffices for this case. For we conclude that the injunction issued by the Dis-

> trict Court was 'necessary in aid of its jurisdiction' and thus permitted under the exceptions specifically allowed by Congress."

To the first sentence in the above quoted excerpt is a footnote (p. 505) of which the following is the concluding paragraph:

> "In view of our ruling, we find it unnecessary to consider whether, apart from the specific exceptions contained in Sec. 2283, the District Court was justified in enjoining this intrusion on an exclusive federal jurisdiction. Cf. *Bowles v. Willingham*, 321 U. S. 503, 510-511."

It thus appears that in deciding the *Capital Service* case and with the *Bowles* case in mind, this Court nevertheless recognized as an open one the question of whether Section 2283 has application apart from its express exceptions where there is present an exclusive federal jurisdiction, and intentionally left the question undecided. Apparently the question has not been involved in any subsequent decision by this Court.

Even if the concept that the prohibition of Section 265 did not come into play where there was present an exclusive federal jurisdiction, were to be accepted as an established legal principle with reference to the application of Section 265, there is no basis for accepting a corresponding concept in connection with the application of Section 2283. The factual situation in every case where such concept was voiced with reference to Section 265 was wholly different from that in the *Capital Service* case as well as in the instant case. For example, with reference to the *Bowles* case, it must have been the Congressional intention in enacting the Emergency Price Control Act while Section 265 was outstanding and in effect, that enforcement of its provisions should not be hindered by Section 265. Manifestly,

it was with that situation in mind that this Court in the *Boules* case held (p. 510) that the Act therein served as an implied legislative amendment of Section 265 and said (p. 511):

> "The rule expressed in Section 265 which is designed to avoid collisions between state and federal authorities * * * thus does not come into play."

A substantially different Congressional intention, however, must have existed with relation to the application of Section 2283 in cases such as the *Capital Service* and instant cases, because it was enacted after the National Labor Relations Act had been amended by the Labor Management Relations Act.

Section 2283 specifies by its terms the only exceptions to the prohibition it recognizes and by means thereof it provides an adequate and serviceable method of preventing the statute's operation from thwarting or impairing enforcement of federal legislative enactments, both present and future, and whether the jurisdiction provided for in such enactments be exclusively federal or concurrently federal and state. Section 2283, therefore, definitely removes any conceivable basis for even an inference either that any subsequent legislation could impliedly amend its provisions or that Congress did not intend that it, apart from its specified exceptions, should come into play where there is present an exclusive federal jurisdiction.

A wholly different situation existed with reference to Section 265 which specified the single exception as one relating to proceedings in bankruptcy and which in identically the same form had been in effect since 1874 (see *supra*, p. 7, note 1). Except for resorting to the expediency either of inferring that subsequent legislative enactments impliedly amended Section 265, or that Congress did not intend that it, apart from its exception,

should come into play where there was present an exclusive federal jurisdiction (*Toucey v. New York Life Insurance Co.*, 314 U. S. 118, 133-134 and *Boucles v. Willingham*, 321 U. S. 503, 510), the operation of Section 265 with relation to subsequently enacted federal legislative acts might, and probably would, have thwarted or impaired proper enforcement thereof.

These essential and very real differences between Sections 265 and 2283 undoubtedly account for the fact that in the *Boucles* case, involving Section 265, the court unequivocally held that the Emergency Price Control Act impliedly amended Section 265, and having so held, then stated that Section 265 had not come into play because there was present exclusive federal jurisdiction; whereas in *Capital Service Inc. v. Labor Board*, 347 U. S. 501, involving Section 2283, the court relied exclusively upon the second exception therein stated in upholding the injunctive order under appeal therein, after the court had expressly mentioned but chose not to decide whether the concept above referred to as associated exclusively with Section 265 had any application to Section 2283.

These differences between Sections 265 and 2283 render the instant case distinguishable from the *Boucles* case and every other case involving Section 265 in which the court made any reference to the concept previously adverted to. In addition, there are other reasons subsequently herein considered (*infra*, p. 19) for distinguishing the instant case from not only the *Boucles* case and the *Capital Service* case, but each of the other cases referred to in petitioners' brief in which was considered the question of the application of either Section 265 or Section 2283, reference being here made especially to the point that the instant action has been brought by private parties wholly without any authorization under the National Labor Rela-

tions Act as amended, whereas each of the cases on which petitioners rely was brought by a federal agency expressly authorized so to act in connection with legislation which it was charged with the duty of enforcing.

The National Labor Relations Act as amended is an actual source of conflict with respect to federal and state jurisdictional questions. In *Garner v. Teamsters Union* 346 U. S. 485, 488, it was said:

> "The National Labor Management Relations Act, as we have before pointed out, leaves much to the states, though Congress has refrained from telling us how much. We must spell out from conflicting indications of congressional will the area in which state action is still permissible."

It therefore appears that under the Act, especially, there is no such exclusive federal jurisdiction as would justify viewing Section 2283, enacted after the Labor Management Relations Act, as a statute limited in its application to situations involving concurrent jurisdiction of federal and state authorities.

Pertinent in this connection is the collateral question in the instant case (and it was so referred to by the Court of Appeals (R. 30-31)) as to whether the recurrent and unannounced obstructing of the entrances to respondent's picketed stores by the Union conduct complained of (R. 7-8), lies on the state or the Labor Board side of the undefined jurisdictional line. Respondent claims that such conduct is subject to state control and for supporting authority relies upon such cases as, for example, *Auto Workers v. Wisconsin Board*, 336 U. S. 245, wherein recurrent and unannounced work stoppages by employees while at work in a plant, as a means of forcing the employer to agreement upon the terms of a proposed labor contract, were determined to be within the area of state jurisdiction.

C. The Instant Case is Not Within Any of the Three Exceptions Specified in Section 2283.

1. The First Exception.

With relation to the first excepton, the prohibition of the statute applies "except as expressly authorized by Act of Congress." Respondent maintains that Congress has not given the requisite express authorization, or even any implied authorization, for the issuance of an injunction under a situation such as is presented by the case at bar, and that, therefore, the first exception is without any application herein.

In petitioners' brief (pp. 10-11; 34-36) it is in effect conceded that there is no express authorization for the granting of an injunction in the case at bar. Nevertheless, the argument is made that implied authorization is enough to satisfy the first exception and that such authorization must be implied from the National Labor Relations Act, as amended, in order to prevent state court interference with the National Labor Relations Board's exclusive jurisdiction.

The end result of petitioners' argument as to the first exception is that the words "as expressly authorized" should be construed to mean "as expressly or impliedly authorized." Any such construction would be violative of the principles of statutory construction previously herein referred to (*supra*, pp. 10-11).

Even if it be assumed, however, that implied authorization is enough to satisfy the first exception, still the instant action would not be within its terms because of the express provisions of the National Labor Relations Act, as amended. The Act, under its express terms, vests exclusive initial jurisdiction in the Board as to all matters covered by its terms. It therefore prohibits any inter-

invention by federal courts except by way of review or on application by the Board. It follows that, since the instant action is one by petitioners, as distinguished from one by the Board, the District Court was not only without any authorization to grant the requested injunction, but it was actually precluded from doing so by express provisions of the National Labor Relations Act vesting the Board with exclusive initial jurisdiction as to all matters covered by its terms. *Garner v. Teamsters Union*, 346 U. S. 485; *Myers v. Bethlehem Ship Building Corp.*, 303 U. S. 41; *Amalgamated Utility Workers v. Consolidated Edison Co.*, 309 U. S. 261; and *International Union v. Underwood Corp.* (C. A. 2, No. 182, Jan. 6, 1955) (not yet officially reported), 35 L. R. R. M. 2340.

Of the cases cited in petitioners' brief (p. 35) in support of the argument therein as to the alleged application of the first exception, the action in each of the first four[1] was brought by the Price Administrator under authorizing provisions of the Emergency Price Control Act which was therein involved, and in each of the other two[2] was brought by the National Labor Relations Board. Since none of such cited cases involved an action by private parties, as does the case at bar, petitioners' argument here referred to derives no support from any of them.

Also inapplicable to the situation presented in the case at bar are the views set forth in Moore's *Commentary on the U. S. Judicial Code* (1949) 410, upon which petitioners rely in support of their argument with respect

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[1] *Bowles v. Willingham*, 321 U. S. 503; *Fleming v. Rhodes*, 331 U. S. 100; *Porter v. Dicken*, 328 U. S. 252, and *Porter v. Lee*, 328 U. S. 246.

[2] *National Labor Relations Board v. Sunshine Mining Co.* (C. A. 9), 125 F. (2d) 757 and *National Labor Relations Board v. Underwood Machine Co.* (C. A. 1), 198 F. (2d) 93.

to the alleged application of the first and second exceptions (P's.' Br., pp. 10-11; 33-36). Under the views of the author here referred to, the National Labor Relations Act is among "Examples of the statutory authorization which are either sufficiently express to come within the first exception to § 2283 or sufficiently clear to operate within the second exception * * *." That such views are to be confined solely to actions brought by the National Labor Relations Board or other governmental enforcement agency, as distinguished from actions brought by labor unions or other private parties, is demonstrated by the authorities cited in the text referred to (p. 410 and notes). The only cited case which involved the National Labor Relations Act is *NLRB v. Bachelor* (C. A. 7), 120 F. (2d) 574, from the opinion of which (p. 576) the following is an excerpt:

> "* * * the Labor Relations Act intrusted the exclusive power to prevent unfair labor practices with the Board * * *. *Amalgamated Workers v. Consolidated Edison Co.*, 309 U. S. 261, 266-269 * * *."

As so limited, the author's views do not carry even an implication that he is of the opinion that an action for injunctive relief brought by private parties, as distinguished from the Labor Board, comes within the first or second exception specified in Section 2283. A like observation obtains with respect to the views expressed in *The Federal Courts and the Federal System* by Hart and Wechsler (1953) 1076, referred to in petitioners' brief, pages 34 and 36.

With reference to Section 2283, as previously herein pointed out (*supra*, pp. 14-16), there is no proper basis for any "statutory qualifications" (also referred to as "implied qualifications") within the meaning of the quotations as

set forth in petitioners' brief (pp. 10, 34, 35 and 36). In other words, the situation which prevailed with respect to Section 265 was one which permitted exceptions to that Section to be implied from subsequently enacted legislation, whereas with reference to Section 2283, no such situation exists and the only exceptions to the prohibition in the latter statute are those specified by its terms.

To the extent, if any, that there may be any Acts of Congress containing provisions insufficient to qualify under the words "as expressly authorized" in the first exception, the problem presented thereby is one for Congress, not the courts (*Pillsbury v. United Engineering Co.*, 342 U. S. 197, 199; *Ex Parte Collett*, 337 U. S. 55, 77; and *Toucey v. New York Life Insurance Co.*, 214 U. S. 118).

2. The Second Exception.

The second exception, by its terms, removes the prohibition of the statute against a court of the United States granting an injunction to stay proceedings in a state court only "where necessary in aid of its jurisdiction." Because of its phraseology, this exception carries two requisites, each of which must be complied with before it can have any application to remove the prohibition of the statute from petitioners' action.

First, there must be jurisdiction to be aided by the requested staying of respondent's state court action, which jurisdiction, by reason of the presence of the word "its," necessarily means the jurisdiction of the District Court, not that of the National Labor Relations Board. Second, the granting of the requested injunction to stay respondent's state court action must "be necessary in aid of" the District Court's jurisdiction. Neither of such requisites is met by petitioners' action.

Even if it were to be assumed that the District Court had jurisdiction of petitioners' action, still the second exception has no application to the case at bar by reason of the impossibility of satisfying the second requisite above referred to. Petitioners' action was the only one before the District Court involving any of the subject matter of respondent's state court action. As disclosed by petitioners' complaint (R. 16-21), the sole relief sought in petitioners' action was an injunction to stay the state court action. It follows that the second exception can have no application under the assumption aforesaid because to apply it would be tantamount to holding that the District Court's staying of the state court action is necessary in aid of its jurisdiction to so act. Cf. *Capital Service, Inc. v. Labor Board*, 347 U. S. 501, in which this Court upheld a stay, at the instance of the Board, of a state court action on the ground that the second exception to Section 2283 had been met in that the injunction was necessary to aid the jurisdiction of the District Court in another pending action by the Board for an injunction under Section 10 (1) of the Labor Relations Act against certain conduct of the labor union which was also the defendant in the state court action.

Respondent further maintains, however, that the District Court is without jurisdiction in the case at bar. The National Labor Relations Act, as amended, contains express provisions which are set forth in the Appendix to petitioners' brief (pp. 45-49) and which are determinative of the occasions and instances when, and the conditions under which, a federal court may act with respect to any labor matter which is within the exclusive jurisdiction of the National Labor Relations Board, none of which has any application herein. Petitioners make no claim

that their action was brought pursuant to any provisions of the Act. Their complaint (R. 16-21) discloses that their claim as to jurisdiction of the District Court was predicated solely on Sections 1337 and 1651 (28 USC). The fact is, however, as stated in their brief, page 5, that they sought the injunction "on the ground that Richman's petition complained of matters within the exclusive jurisdiction of the National Labor Relations Board and that the state court was therefore without jurisdiction (R. 16-21)." If, therefore, as contended by petitioners, the subject matter of the state court action is within the exclusive jurisdiction of the Board, then by the same reasoning which allegedly deprives the state court of jurisdiction and vests it exclusively in the Board, the District Court is without any power or jurisdiction on application by petitioners, as distinguished from the Board, to stay the proceeding in the state court. It is from the provisions of the National Labor Relations Act, as amended, alone that the Board derives all of its exclusive jurisdiction with respect to labor matters covered by its terms. It is because of the same provisions that this Court has several times pointed out that not only state courts, but also federal courts, are deprived of jurisdiction with respect to matters within the exclusive jurisdiction of the Board, subject to the right and duty on the part of specified federal courts to act in such matters by way of review and upon application by the Board or its agent, as provided for in the Act (29 USC Supp. V, Sections 160 (e), (f), (j) and (l)). In *Garner v. Teamsters Union*, 346 U. S. 485, this Court in referring to the fact that the Act provides a complete means for the handling of labor matters covered thereby, said, page 489:

> "The power and duty of primary decision lies with the Board, not with us."

and then concluded as follows, page 491:

> "The same reasoning which prohibits federal courts from intervening in such cases, except by way of review or on application of the federal Board, precludes state courts from doing so. Cf. *Myers v. Bethlehem Shipbuilding Corp.*, 303 U. S. 41; *Amalgamated Utility Workers v. Consolidated Edison Co.*, 309 U. S. 261."

It follows that, since the National Labor Relations Act, as amended, vests exclusive initial jurisdiction in the Board with respect to all matters covered by its terms, the Board's jurisdiction must be exclusive initially as to all actions and proceedings to protect or vindicate such jurisdiction. It also follows that with respect to petitioners' action, the District Court was without jurisdiction notwithstanding any such, as it might have had, except for the provisions of the Act, by reason of Sections 1337 and 1651, and that petitioners' action fails to satisfy either of the requisites to the second exception of Section 2283. These conclusions not only accord with the views of the District Court and of the Court of Appeals herein but are supported by *International Union v. Underwood Corp.* (C. A. 2, No. 182, Jan. 6, 1955) (not yet officially reported), 35 L. R. R. M. 2340; *Johnston v. Colonial Provision Co.* (D. C. Mass., No. 54-923-F, Dec. 28, 1954) (not yet officially reported), 35 L. R. R. M. 2308; and *International Union v. Wm. D. Baker Co.* (E. D. Pa.), 100 F. Supp. 773. The case at bar and the three cases last referred to are believed to comprise the only adjudicated cases,* involving Section 2283, in which a stay of state court

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* The Second Circuit Court of Appeals in the *Underwood Corp.* case above referred to reversed a judgment of the United States District Court, District of Connecticut, in No. 5186 (Dec. 8, 1954) (not yet officially reported), 35 L. R. R. M. 2337.

proceedings by a District Court was sought by one or more private parties on the ground that the subject matter of the state court action was vested exclusively in a government agency.

Sufficiently comparable factually with the instant case to merit their consideration herein are: *United Electrical v. Westinghouse Electric Corp.* (E. D. Pa.), 65 F. Supp. 420 and *Davega-City Radio, Inc. v. Boland* (S. D. N. Y.), 23 F. Supp. 969, although Section 265 rather than Section 2283 was involved in each. In each thereof (1) private parties were seeking injunctive relief, (2) claiming that a state court had no jurisdiction to proceed because of the provisions of the National Labor Relations Act, and (3) the jurisdiction of the District Court was invoked solely for the purpose of preventing further proceedings in the state court, and not in aid of jurisdiction of the District Court otherwise invoked, and in each of them it was held that Section 265 prohibited the District Court from granting the requested injunctive relief.

National Labor Relations Board v. New York State Labor Relations Board (S. D. N. Y.), 106 F. Supp. 749 (Ps.' Br. p. 37) offers no help herein because the injunctive relief therein was sought by the Board, not by private parties. In *Food, etc. Workers v. Smiley* (C. A. 3), 164 F. (2d) 922; *United Office etc. Workers v. Smiley* (N. D. Pa.), 77 F. Supp. 659; *Linde Air Products Co. v. Johnson* (D. Minn.), 77 F. Supp. 656; and *A. F. of L. v. Watson*, 327 U. S. 582 (all referred to in petitioners' brief, p. 39), no mention was made of Section 265 and apparently it was not involved in any thereof. Moreover, the case at bar is distinguishable from each of the cases last referred to for other reasons. Herein the petitioners sought the injunction on the sole ground that the subject matter of respondent's state court action constituted an invasion

of the exclusive jurisdiction of the National Labor Relations Board. No such comparable situation was present in any of the cited cases. For example, in the *Watson* case, the injunction that was sought was to enjoin state officials from instituting threatened proceedings to enforce a Florida Constitutional provision claimed to outlaw closed shop contracts and thus violate provisions of the Constitution of the United States.

The language from the opinion in the *Underwood* case, which is referred to in petitioners' brief (pp. 38-40) offers no support for their argument made with reference thereto. Such language was used with express relation to possible jurisdictional arguments which might have obtained had the action therein been brought by the National Labor Relations Board instead of by the labor union, and viewed in its proper context, it discloses that it was the court's view that any argument as to possible potential jurisdiction of a District Court to enjoin a state court interference with exclusive federal jurisdiction would obtain only where the injuctive relief is sought by a governmental agency having exclusive jurisdiction, and not by a labor union or other private party.

The very recent *Underwood* case not only fully supports the views of the District Court and of the Court of Appeals in the case at bar, but it stands as an authority opposed to every argument set forth in petitioners' brief, and it is therein pointed out that even though a "deplorable situation" may result from labor unions being prevented by Section 2283 from enjoining state court invasions of the jurisdiction of the National Labor Relations Board, as is contended for at length in petitioners' brief (pp. 19-28, 41-42), nevertheless Congress, not the courts, must be looked to for redress with respect to any such situation. This case also supports the Court of Appeals' view in the

case at bar that whether or not the subject matter of respondent's state court petition is all or in part within the Labor Board's jurisdiction presents only a collateral question not necessary to any proper determination of the matter before the Court. In this connection it is to be observed that in deciding in the cited case that Section 2283 prohibited the District Court from granting the injunction requested by the labor union, it was expressly assumed by the Court of Appeals that all of the subject matter of the state court action was within the exclusive jurisdiction of the Board.

3. The Third Exception.

Petitioners make no claim that the instant case is within the third exception and it needs therefore only brief, if any, attention. By its terms this exception applies only where the court by injunction stays proceedings in a state court "to protect or effectuate its judgments." Aside from denying a stay and a preliminary injunction herein (R. 24, 27), the only judgment rendered in this controversy by the District Court is its order remanding the removed action to the state court "for further proceedings" (R. 26, Finding 5) therein. Obviously, the requested preliminary injunction could not be necessary to protect or effectuate the judgment of remand,—on the contrary, it would result in a defeat thereof.

II.

PETITIONERS, HAVING SUBMITTED TO THE STATE COURT THE QUESTION AS TO THE EXCLUSIVE JURISDICTION OF THE LABOR BOARD, AND THE ISSUE HAVING BEEN DECIDED ADVERSELY TO THEM, SHOULD NOT BE PERMITTED IN THE CASE AT BAR TO OBTAIN IN THE DISTRICT COURT A REVIEW OF THE DECISION OF THE STATE COURT.

The record (R. 26-27) and petitioners' brief (pp. 4-5) disclose that petitioners moved the state court to dismiss respondent's action on the ground that the subject matter thereof was within the exclusive jurisdiction of the National Labor Relations Board and that the state court was therefore without jurisdiction. They further disclose that, after that motion (treated as a demurrer under Ohio procedure) was denied, petitioners instituted the action at bar to enjoin respondent from further prosecution of its state court action on identically the same ground, i.e., that respondent's petition complained of matters within the exclusive jurisdiction of the Board and that the state court was therefore without jurisdiction.

Under the circumstances, the case at bar amounts to a bill in equity in the District Court to review the order of the state court overruling petitioners' motion to dismiss, treated as a demurrer. This, the courts do not, and for elementary reasons should not, permit. *American Surety Co. v. Baldwin*, 287 U. S. 156, 164-167.

A closely comparable factual situation was present in *Davega-City Radio, Inc. v. Boland* (S. D. N. Y.), 23 F. Supp. 969, in which an employer was attacking the jurisdiction of a state board and certain courts. After the federal district court said it was powerless to grant the requested injunction because of Section 265, it further said (p. 970):

"There is also a further reason why the suit must be dismissed, namely, the principle that a decision of a state court may not be reviewed by bill in equity in a federal court. American Surety Co. v. Baldwin, 287 U. S. 156, 164, * * *; Lynch v. International Banking Corp., 9 Cir., 31 F. 2d 942, certiorari denied, 280 U. S. 571, * * *; Furnald v. Glenn, 2 Cir., 64 F. 49, 54; Ritholz v. North Carolina State Board, D. C. M. D. N. C. 18 F. Supp. 409, 413. Here the plaintiff has presented to the state court the same questions as to the jurisdiction of the state Board that it wishes this court to decide. The issue having been decided adversely to it, its remedy is appeal through the appropriate state courts and, if necessary, review by the Supreme Court of the United States. *It cannot obtain a review by this independent suit in the federal court.*"

That case was cited with approval in *General Exporting Co. v. Star Transfer Line* (C. A. 6), 136 F. (2d) 329, in which an interpleader suit in a Michigan state court had proceeded to pronouncement of a judgment before one of the parties commenced an action in a United States district court for an adjudication of title as to the subject of the state court action, and for an injunction against any further proceedings in the state court. The defendants filed a motion to dismiss the complaint in the federal court upon several grounds, including the ground that it improperly attempted to cause the district court to "act as an appellate court with respect to the Superior Court of Grand Rapids, Michigan" (pp. 331, 332). The district court granted a motion to dismiss the case (p. 332) and in affirming, the Court of Appeals said (p. 335):

"The attempt to relitigate in federal courts issues already determined in state court proceedings has been disapproved in numerous opinions of United States Courts below the grade of the Supreme Court.

Ritholz v. North Carolina State Board of Examiners in Optometry, D. C. N. C., 18 F. Supp. 409, 413 (three-judge court); Davega-City Radio v. Boland, D. C. N. Y., 23 F. Supp. 969, 970 (three-judge court); Hall v. Ames, 1 Cir., 190 F. 138, 140, 141; Furnald v. Glenn, 2 Cir., 64 F. 49, 54 * * *"

and further said (p. 335):

"* * * The Circuit Court of Appeals for the First Circuit, in the third case cited above, considered it certain that no power is vested in a federal trial court in an independent collateral proceeding to review a cause heard and determined by a state court of general jurisdiction to the end that the proceedings in the state court should be overthrown. Considerations of comity were also regarded as forbidding a review of the decision of the state court. In the last case listed, the Circuit Court of Appeals for the Second Circuit wrote: 'No authority has been cited for the proposition that one court of equity will undertake to annul *the interlocutory decree* of another court of equity; and there is no support for it upon principle or in good sense. The party complaining of such a decree has a sufficient remedy by applying to the court which made it, and it would be most unseemly, and an intolerable interference with the orderly administration of justice, for another court to assume to interpose.' We are in accord with these federal court opinions, and consider that, in dismissing the instant action, the District Court exercised sound discretion.

"No reason for reversal appearing, the judgment of the District Court is affirmed."

The courts which have decided questions involving facts substantially similar to those here presented have held that the appropriate forum for determination of the state courts' jurisdiction is that court, subject to appellate review in the state courts, and thereafter in this Court.

Thus, in *United Electrical, etc. v. Westinghouse Electric Corp.* (E. D. Pa.), 65 F. Supp. 420, the court said (p. 423):

> "In any event, this court cannot assume that a state court will act without regard to the applicable law and without due consideration for the rights of the petitioners here. The contrary is true, and is amply demonstrated by the cases: Park & Tilford Import Corp. v. International Brotherhood of Teamsters, supra, is exemplary. *Moreover, whether the particular proceeding is, in whole or in part, one within the jurisdiction of the state court, and whether that court has power to grant the remedy prayed for, are questions which may be capably determined by that court, and error is a matter of appellate review.* The question of jurisdiction, if at all involved, is appropriately one for the decision of the state court and could manifestly be presented and determined in the action there. Kohn v. Central Distributing Co., 1939, 306 U. S. 531, 534, 59 S. Ct. 689, 83 L. Ed. 965."

In *International Union v. William D. Baker Co.* (E. D. Pa.), 100 F. Supp. 773, there was cited with approval the statement in *H. J. Heinz Co. v. Owens*, 189 F. (2d) 505, 509, as follows (p. 777):

> "* * * Judge Hastie's language on that point in the Heinz opinion, 189 F. 2d at page 509, is appropriate at this point: 'We find no justification for prejudging the question or for assuming that the tribunal will not respect any controlling limitations upon its power. Cf. Adams v. Decoto, D. C. S. D. Cal. 1927, 21 F. 2d 221. But if it should err and a substantial federal question should be involved, there is open a course of review even to our highest court.' "

Also cited with approval therein was the statement in *United Electrical, etc. v. Westinghouse Electric Corp.*, 65 F. Supp. 420, which is above quoted.

CONCLUSION.

For the reasons previously herein stated, respondent respectfully submits that the judgment of the Court of Appeals should be affirmed.

Respectfully submitted,

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No. 173

In the Supreme Court of the United States

OCTOBER TERM, 1954

AMALGAMATED CLOTHING WORKERS OF AMERICA AND CLEVELAND JOINT BOARD OF THE AMALGAMATED CLOTHING WORKERS OF AMERICA, PETITIONERS

v.

THE RICHMAN BROTHERS COMPANY

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

MEMORANDUM FOR THE NATIONAL LABOR RELATIONS BOARD AS AMICUS CURIAE

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MEMORANDUM FOR THE NATIONAL LABOR RELATIONS BOARD AS AMICUS CURIAE

The Solicitor General, on behalf of the National Labor Relations Board, as *amicus curiae*, submits this memorandum in support of reversal of the judgment of the Court of Appeals.

We shall not burden the Court by repeating in detail the arguments in petitioners' brief, with which we agree in the main. Moreover, the questions here presented have, to a large extent, already been argued to the Court in *Capital Service, Inc.* v. *National Labor Relations Board*, 347 U. S.

501, decided at the last term. For a fuller exposition of the Government's views on the general problems involved, the Court is respectfully referred to the brief submitted by the Board in that case (No. 328, Oct. Term, 1953). This memorandum is devoted mainly to those aspects of the present case which are of particular importance to the National Labor Relations Board and other regulatory agencies concerned with the enforcement of federally secured rights through exclusively federal procedures.

This case, like *Garner* v. *Teamsters Union*, 346 U. S. 485, presents a situation where the controversy between the parties was "not subject to litigation in the tribunals of the State" (p. 501) because exclusive jurisdiction over the subject matter was vested by Congress, in the Labor Management Relations Act, in the Labor Board and the federal courts. It is undisputed that petitioners' picketing and related conduct, whether lawful or unlawful, had a substantial effect on interstate commerce. Accordingly, the legality of these activities, in their labor relations aspects, was governed solely by federal law; and that issue could be raised only in a proceeding instituted before the Board, and, if raised, would be determined by the Board in accordance with not only the substantive standards but also the procedures and remedies prescribed by Congress.

The provisions of the Taft-Hartley Act dealing with proscribed union activities were carefully

drawn. The subject was controversial, and the Act reflects a legislative purpose to strike a fair balance between the rights of labor, management, and the public. Congress was highly selective in its authorization of remedies to deal with assertedly improper union conduct. In the background was the Norris-LaGuardia Act, with its withdrawal of jurisdiction from the federal courts to grant injunctions in labor disputes. Congress was aware that a labor injunction, even though described as temporary or interlocutory, can end the dispute. Accordingly, it carefully defined, in Section 8 (b), those practices by labor unions and their agents which were to be proscribed; and, in Section 10, it spelled out the procedure to be followed in dealing with charges of union misconduct. (29 U. S. C. 158, 160.)

The Board's jurisdiction over alleged unfair labor practices by a union can be invoked only after a charge is filed with it; it cannot act *sua sponte*. If, after investigation of the charge, the Board's officer or regional attorney finds that there is "reasonable cause" to believe that the charge is true and that a complaint should issue, and that the union's activities fall within the category of those enjoinable under the Act, the Board petitions the appropriate district court for temporary injunctive relief pending the final adjudication of the Board.

Several things are noteworthy about this procedure. First, the Board cannot apply for an

injunction unless and until it has completed an investigation of the charge and has concluded that it is *prima facie* supported by the facts. This is an obvious safeguard against precipitous issuance of injunctions. Secondly, an injunction can be granted by a district court only at the instance of the Board, and not of the employer or other interested party. Thirdly, where the union activities do not come within the class of proscribed unfair labor practices, no injunction can be sought or issued.

This procedure, carefully delineated by Congress, is the exclusive procedure provided by law for dealing with such controversies. Nevertheless, it was not followed in the present case. Instead of having this dispute decided on the basis of federal law by federal tribunals, the matter was taken to a state court which decided it on the basis of state law. At respondent's instance, an Ohio state court, enforcing what it declared to be the law and public policy of the state in the field of labor relations, enjoined petitioners from carrying on picketing and related activities at 69 of respondent's stores, situated not only in Ohio but in 15 other states.[1] There can be no question that the injunction was a patently *ultra vires* assertion of jurisdiction by a state court in an exclusively federal matter. There can likewise

[1] *Richman Brothers Co.* v. *Amalgamated Clothing Workers*, 51 Ohio Opinions 145 (Common Pleas Court, Cuyahoga County), 116 N. E. 2d 60.

be no question that, if it were possible for the injunction to be reviewed directly and immediately by this Court, it would be set aside. *Garner v. Teamsters Union*, 346 U. S. 485. The only question here is whether a federal district court, on application of petitioners, could enjoin respondent from enforcing the state court injunction. As a practical matter, such application to a federal district court was the only remedy available to petitioners. If the decision of the Court of Appeals in this case is correct, it means that there is no adequate procedure available under existing law for a union, where its activities are subject to the exclusive jurisdiction of the National Labor Relations Act, to obtain invalidation of an invalid state court injunction which, though denominated temporary or interlocutory, effectively terminates the dispute.

The injunction in the present case was issued April 14, 1953, and is still outstanding. It could not be appealed either to any other state court or to this Court. *Building Union v. Ledbetter Co.*, 344 U. S. 178. Abstractly speaking, petitioners could conceivably have pursued several courses after the "temporary" state court injunction was issued. First, they might have sought to appeal to a higher state court. Any such appeal would, of course, have been abortive since under state law a temporary order is not appealable. Secondly, they might have proceeded to trial, and if the injunction were eventually made perma-

nent, they could then have appealed to a higher state court and, after exhausting state remedies, sought certiorari here. After some time, perhaps after the controversy had become academic and moot, they might have succeeded in having the injunction vacated. To do so, however, they would have been required to engage in a lengthy and perhaps fruitless litigation in the state courts, trying issues which Congress expressly provided should be tried by a specialized federal administrative tribunal, the National Labor Relations Board, and then reviewed for errors of law by federal appellate courts.

Thirdly, petitioners might have attempted to persuade respondent to file a charge against them with the Labor Board. Such a charge would have been a *sine qua non* to the exercise of Board jurisdiction in the case, and if filed might have resulted in the Board's seeking ancillary injunctive relief, as in the *Capital Service* case. This alternative depended, of course, upon respondent's willingness, after having succeeded in obtaining from a state court the injunctive relief it desired, to submit the matter anew to the Labor Board. Respondent chose, understandably, to rest on the state court injunction. Thus, the only real alternative open to petitioners was to seek relief by independent suit [18] in a federal dis-

[18] Petitioners' earlier attempt to reach the federal district court by removal of the state suit pursuant to 28 U. S. C. 1441 failed, the court holding that a removable cause was not presented. See R. 23, 32 L. R. R. M. 2066. That order was not appealable. 28 U. S. C. 1447 (d).

trict court, on the ground that the rights secured to them by the National Labor Relations Act were effectively being impaired by the outstanding state court injunction.

The court below has held that Section 2283 of the Judicial Code (28 U. S. C.)[2] bars issuance of an injunction, at the suit of a private party, against enforcement of an invalid state court injunction regulating activities as to which exclusive jurisdiction of the subject-matter has been preempted by the National Labor Relations Act. The court below suggested, however, that Section 2283 might not be a bar if the suit in the federal court were brought by the Board rather than a union (R. 34–35). Subsequent to its decision, two other courts, following essentially its reasoning, have drawn the same distinction. *Electrical Workers, C. I. O.* v. *Underwood Corp.*, 35 L. R. R. M. 2340 (C. A. 2, January 6, 1955); *Johnston* v. *Colonial Provision Co.*, 35 L. R. R. M. 2308 (D. Mass., December 28, 1954). As we shall show, *infra*, pp. 13–17, 20–21, the inapplicability of Section 2283 to the present situation is not affected by the circumstance that the injunction is sought by a private party rather than the Board. At this point, however, we emphasize that the conclusion of the court below, which leaves a suit by

[2] This provision reads: "A court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments."

the Board as the sole possible means of promptly alleviating a state court's impairment of the rights and remedies created by the Act, would, in practice, result in leaving such encroachments largely unchecked.

The Board does not consider that Congress has imposed on it a general obligation to safeguard exclusive federal jurisdiction in the field preempted by the Act, by intervening in state court proceedings involving a question whether the subject-matter of the controversy is such as to preclude state action, or by bringing independent suits in federal courts to restrain such state proceedings. Experience has shown that the number of state court cases presenting a question as to the preemptive effect of the Act is legion;[3] and that the Board learns about only a fraction, and, of these, many are not brought to its attention until after the invalid state injunction has already "decided" the labor dispute. Moreover, the Board's limited budget and personnel would not permit its participation in such cases on any substantial basis. Accordingly, the Board has followed the policy of participating as *amicus curiae* in only those cases presenting a preemption issue which happen to reach this Court. Of necessity it relies on the private parties to protect the Act's exclusive sphere in the day-to-day state court litigation continually threatening it.

[3] A check of the Labor Relations Reporter for the period from January 18, 1954, to September 6, 1954, discloses approximately 35 reported cases of this kind. 33 L. R. R. M. 2324 through 34 L. R. R. M. 2748.

The Board has acted to avert a state encroachment, by means of an independent suit in the federal district court, only in the few situations where the Board's jurisdiction has actually been invoked with respect to the identical labor dispute involved in the state action, so that the continuation of the latter would directly interfere with the Board proceeding.[1] Since Board jurisdiction is dependent upon the filing of a charge or a representation petition with the Board, a party can thus obviate the likelihood of a Board-instituted federal injunctive suit (the only type permitted under the holding of the court below) merely, as in this case, by going to the state court alone and failing to invoke Board processes.

The conclusion of the court below, which would result in this anomaly, rests on the following reasoning: A federal suit by a private party to stay a state court injunction regulating conduct preempted by the Act cannot be regarded as "expressly authorized by Act of Congress," within the first exception specified in Section 2283. For the only provisions of the National Labor Relations Act which could confer power to seek a lifting of the state ban on the union conduct

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[1] *Capital Service, Inc.* v. *National Labor Relations Board*, 347 U. S. 501; *National Labor Relations Board* v. *Industrial Commission of Utah*, 84 F. Supp. 523 (D. Utah), affirmed, 172 F. 2d 389 (C. A. 10); *National Labor Relations Board* v. *New York State Labor Relations Board*, 106 F. Supp. 749 (S. D. N. Y.); *National Labor Relations Board* v. *Butte Labor Relations Board*, 33 L. R. R. M. 2841 (D. Mont.).

involved are Sections 10 (j) and (l), authorizing a federal injunction in respect to such conduct, and, by their terms, these provisions grant this authority solely to the Board. (Sections 10 (j) and (l) are set out in petitioner's brief at pp. 47–49.) By the same token, neither can a private suit be subsumed under the second exception to Section 2283, "in aid of [the district court's] jurisdiction"; the only jurisdiction of the district court which its injunction could conceivably aid would be that court's potential power over the same subject under Sections 10 (l) and 10 (j) of the Act, which the Board alone has standing to invoke, and thus to protect. Consequently, if Section 2283 is to be relaxed in the situation here, it can only be where the Board, rather than a private party, brings the suit.

We submit that there are two basic flaws in the foregoing reasoning, which also forms the basis for a similar holding by the Second Circuit in *Electrical Workers, C. I. O.* v. *Underwood Corp.*, 35 L. R. R. M. 2340 (decided January 6, 1955). First, the power of a district court to entertain a suit to restrain an invalid intrusion by a state court upon the field preempted by the Act is not dependent upon Sections 10 (j) and (l) of the Act; it flows from Section 1337 of the Judicial Code (28 U. S. C.)* (which draws no distinction

*This section provides in relevant part that:

"The district courts shall have original jurisdiction of any civil action or proceeding arising under any Act of Congress regulating commerce * * *."

between private parties or the Government), and from the scheme of the Act as a whole (which confers rights on individuals that are entitled to protection without the intercession of the Board). Second, it is unnecessary to fit the instant suit within one of the exceptions specified in Section 2283 since, as this Court has held in numerous cases, the policy and history of that provision show that it is applicable only where the state and federal courts have a concurrent jurisdiction over the subject matter, and not where, as here, Congress has vested exclusive jurisdiction in federal tribunals and the state court is wholly without jurisdiction. In any event, the instant suit may be subsumed under the "expressly authorized" exception to Section 2283.[9] We proceed to develop each of these points.

1. In the *Capital Service* case, 347 U. S. 501, 504, this Court recognized that a suit to enjoin state court action on the ground that it invades the field preempted by the National Labor Relations Act, "is a 'civil action or proceeding' arising under an Act of Congress 'regulating commerce,'" and thus within the district court's jurisdiction under "28 U. S. C. § 1337." Although the suit there was ancillary to a proceeding in the same court under Section 10 (l) of the

[9] Petitioners also present substantial arguments in their brief, at pp. 36-38, that the present case also falls within the second exception to Section 2283, which permits a federal court to enjoin state court proceedings "where necessary in aid of its jurisdiction."

Act, that provision was not held to supply the jurisdictional basis for the suit; the issue there was whether the Act had displaced state control over the labor dispute (a question of construction involving the scope of the Act), whereas the Section 10 (l) proceeding presented the issue whether there was reason to believe that the particular union conduct constituted an unfair labor practice for which interim relief was warranted.

That a district court's jurisdiction to restrain conflicting state judicial proceedings does not rest upon Sections 10 (j) and (l) of the Act is further demonstrated by the instances where the state encroachment consists of an attempt to determine representation questions within the Board's exclusive jurisdiction. In such a situation, the district court has jurisdiction of a suit to enjoin the state action under 28 U. S. C. 1337, even though it is clear that the dispute itself is wholly beyond the court's Section 10 (j) or 10 (l) jurisdiction. *National Labor Relations Board* v. *Industrial Commission of Utah*, 84 F. Supp. 593 (D. Utah), affirmed, 172 F. 2d 389 (C. A. 10); *National Labor Relations Board* v. *Butte Labor Relations Board*, 33 L. R. R. M. 2841 (D. Mont.).

The power of a district court to act under 28 U. S. C. 1337, for the purpose of checking conflicting state action in an exclusively federal field, is not expressly conferred by any provision of the National Labor Relations Act. It is founded on established principles of federal jurisdiction, on

the "all writs" section of the Judicial Code (28 U. S. C. 1651), and on implications drawn from the Act as a whole, which evidences Congress' intention to avoid "diversities and conflicts likely to result from a variety of local procedures and attitudes toward labor controversies." *Garner* v. *Teamsters Union*, 346 U. S. 485, 490.[7] The broad basis for granting injunctive relief in a situation like this, as stated in the *Capital Service* case (347 U. S. at 504), is that "where Congress, acting within its constitutional authority, has vested a federal agency with exclusive jurisdiction over a subject matter and the intrusion of a state would result in conflict of functions, the federal court may enjoin the state proceeding in order to preserve the federal right. See *Public Utilities Commission* v. *Gas Co.*, 317 U. S. 456, 468–470; *Bowles* v. *Willingham*, 321 U. S. 503, 510–511. Cf. *American Federation of Labor* v. *Watson* [327 U. S.], at 593–595."

The failure of the court below and the Second Circuit in the *Underwood* case to recognize that a federal court's jurisdiction here is not ancillary to its authority under Sections 10 (j) and (l), but arises independently under 28 U. S. C. 1337, is

[7] This is manifested, e. g., by Section 10 (a) of the Act, which provides that the Board's "power shall not be affected by any other means of adjustment or prevention," and specifies the limited circumstances under which the Board may grant the states authority to regulate in the preempted federal field.

at the root of their erroneous conclusion that only the Board, acting under authority of those Sections, has standing to seek injunctive relief. In short, the established rule that only the Board, and not private parties, may initiate and process unfair labor practice cases (through invocation of Sections 10 (j) and (l) in addition to other provisions in the Act) has no bearing upon the question of whether the Board alone may bring a suit under 28 U. S. C. 1337, or whether it can also be instituted by the private party adversely affected by the illegal state action. The terms of Section 1337, of course, do not restrict the private party; they in effect merely require that the suit present a question as to whether the Act has displaced the state power sought to be exercised, and a suit brought by a private party could raise such question, no less than one brought by the Board.

Moreover, a private party enjoined by a state court from carrying on activities exclusively regulated by the Act would appear to have a legal interest, apart from any possessed by the Board, sufficient to vest it with standing to maintain the federal suit. In addition to frustrating the general policies of the Act, state abridgement of organizational or bargaining rights guaranteed to employees under Section 7 of the Act[*] obviously exerts a direct and substantial impact on

[*] "Section 7 confers [rights] generally on employees and not merely as against the employer." *Hill* v. *Florida*, 325 U. S. 538, 545.

them; similarly, they are directly injured where a state subjects them to a more drastic remedy than the Act provides for such of their conduct as would constitute unfair labor practices thereunder.[9] Furthermore, the fact that employees and their union representative may, without the aid of the Board, properly assert the preemptive effect of the Act as a defense in state proceedings which invade the exclusively federal field (e. g., *Garner* v. *Teamsters Union*, 346 U. S. 485) shows that their separate interest in blocking such state action is legally cognizable.

The validity of the foregoing considerations is not impaired by the holdings that the Act creates only "public" rights which the Board alone can vindicate, and that the procedures which the statute sets up for this purpose cannot be circumvented by direct resort to a district court (cf. R. 34–35).[10] These holdings involve situations where a private party has attempted to interrupt or control the processing of a case through the Act's

[9] Thus viewed, their interest in annulling the state intrusion is much more substantial and personal than a mere desire to act as a "private attorney general" by preserving the Board's right to invoke the potential 10 (j) and 10 (l) jurisdiction of the District Court, the only interest which the Second Circuit in *Underwood* appears to have considered in concluding that a private party lacks standing to maintain a suit like the present one (35 L. R. R. M. at 2341–2342).

[10] *Amalgamated Utility Workers* v. *Consolidated Edison Co.*, 309 U. S. 261; *Myers* v. *Bethlehem Shipbuilding Corp.*, 303 U. S. 41.

unfair labor practice or representation machinery. To permit such intrusion would necessarily impair the efficient discharge of the Board's functions, and would negate the specialized and uniform treatment which Congress intended should be given cases before the Board.

In the situation here, on the other hand, permitting the private party to institute suit in the district court has none of these consequences. The suit does not seek a federal court remedy for unfair labor practices or otherwise interfere with the Board's administrative machinery; there is as yet no case before the Board for processing, the sole object of the suit being to eliminate the deterrent to the use of Board processes which the state has interposed by assuming control over the controversy. In these circumstances, there is nothing in the scheme of the Act or the "public" character of the procedures thereunder which would militate against the right of a private party to maintain a suit like the instant one. Cf. Jaffe, *The Public Right Dogma*, 59 Harv. L. Rev. 720; *Garner* case, 346 U. S. at 495–499.[11]

[11] There is no merit to the suggestion in the opinion below (211 F. 2d at 453), based on the Board's decision in *W. T. Carter and Brother*, 90 N. L. R. B. 2020, 2023–2024, that petitioners might have obtained a remedy against the illegal state court injunction here via the Board's unfair labor practice machinery. It is true that, in *Carter*, the Board held that the employer's action in procuring a state court injunction which prohibited the federally protected activities of his em-

Accordingly, when private parties have sought, by independent suit in the federal district court, to enjoin state administrative proceedings, on the ground that such proceedings are barred by the Act, it has consistently been held that they have standing to raise this question and that the court has jurisdiction under 28 U. S. C. 1337.[12] The same conclusion should hold—insofar as concerns standing and jurisdiction—where suit is to restrain *state court* proceedings. For, as this Court recognized in *Smith* v. *Apple*, 264 U. S. 274, 278–280, and more recently in *Capital Service*, 347 U. S. at 504–505, 28 U. S. C. 2283 is merely a limitation on the power of the federal court to grant equitable relief, and not on its jurisdiction

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ployees constituted a violation of Section 8 (a) (1) of the Act, interdicting employer restraint in the exercise of Section 7 rights. However, the Board limited its holding to the particular circumstances of that case, showing, *inter alia*, that the employer's resort to the state court had been part of a bad faith scheme to defeat union organization. Moreover, the *Carter* holding would clearly not be applicable where, as was alleged here, the conduct respecting which the employer secured a state injunction was not protected by Section 7 of the Act, but, like that in *Garner*, was a possible unfair labor practice thereunder.

[12] *A. F. L.* v. *Watson*, 327 U. S. 582; *Food, Tobacco, Agricultural and Allied Workers* v. *Smiley*, 164 F. 2d 922 (C. A. 3); *United Office and Professional Workers* v. *Smiley* 77 F. Supp. 659 (M. D. Pa.); *Linde Air Products Co.* v. *Johnson*, 77 F. Supp. 656 (D. Minn.). See also *Board of Trade* v. *Illinois Commerce Commission* 156 F. 2d 33 (C. A. 7), affirmed *sub nom. Rice* v. *Santa Fe Elevator Corp.*, 331 U. S. 218.

over the subject matter or on the standing of parties to sue.

2. Thus viewing the ban against enjoining state court proceedings, not as a jurisdictional limitation but as a rule of comity applicable to the granting of injunctive relief, this Court has construed the predecessors to Section 2283 as not barring injunctions in several classes of cases where such relief is "in accord with, and not antagonistic to, our dual system of courts. * * *" *Wells Fargo & Co.* v. *Taylor*, 254 U. S. 175, 183. As more fully shown in petitioner's brief (pp. 28–33) and also in the Board's brief in the *Capital Service* case (pp. 46–54), included within such classes of cases is the situation presented here, where the state court is wholly without jurisdiction over the subject matter, having invaded a field preempted by Congress. For where the state court lacks jurisdiction, the interests of comity and orderly judicial administration are not served by having the federal court, which has exclusive jurisdiction, defer to the state court, which has no jurisdiction. Granting of relief by the federal court, rather than resulting in friction and unseemly conflict between state and federal tribunals having concurrent power over a subject (the evil Section 2283 was designed to avoid), is necessary to prevent state intrusion into an area closed to it.

The validity of this reasoning is confirmed by the alternative ground of this Court's decision in

Bowles v. *Willingham*, 321 U. S. 503, 510–511.[13] In that case, a landlord obtained a state court injunction restraining the Price Administrator from issuing certain rent orders under the Emergency Price Control Act, on the theory that the orders and the statutory provisions on which they rested were allegedly unconstitutional. The Price Administrator brought an action in the federal district court to nullify the effectiveness of the state restraint, urging, *inter alia*, that, since Section 204 (d) of the Emergency Price Control Act vested the Emergency Court of Appeals with exclusive jurisdiction to determine the validity of rent orders and regulations, the state court was wholly without power to adjudicate and regulate these matters. This Court held that Section 265 of the Judicial Code—the predecessor of 28 U. S. C. 2283—did not bar issuance of the federal injunction against the state court proceeding, asserting as one ground for its decision that, since "Congress * * * preempted jurisdiction in favor of the Emergency Court to the exclusion of state courts," the "rule expressed in Section 265 which is designed to avoid collisions between state and federal authorities * * * thus does not come into play" (321 U. S. at 511).[14]

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[13] See also, *Western Fruit Growers* v. *United States*, 124 F. 2d 381, 387 (C. A. 9), discussed in the Board's brief in *Capital Service*, pp. 52–53.

[14] The Court further predicated its holding on the fact that, since the action of the state court also constituted a violation of the federal rent regulations and Section 205 (a) of the

Here, as in the *Willingham* case, a federal injunction is sought against a state court proceeding which that court is powerless to conduct and which obstructs and conflicts with the federal administrative and judicial procedures which Congress specified as exclusive. Here, as there, the rationale of the general prohibition against enjoining state court proceedings "thus does not come into play." And see this Court's express reservation of this question in the *Capital Service* opinion (347 U. S. at 505, note 2).[15]

The significance of the *Willingham* decision is not impaired, as the court below (R. 32–35) and the Second Circuit in *Underwood* (35 L. R. R. M. at 2342) suggest, by the circumstance that a private party instituted the instant suit, whereas

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Emergency Price Control Act empowered the Price Administrator to seek injunctive relief against such violations in either federal or state courts, the latter section constituted an implied legislative amendment to Section 265. This ground, however, was alternative to, and independent of, the exclusive jurisdiction ground discussed above. See *Porter* v. *Dicken*, 328 U. S. 252, 255; *Fleming* v. *Rhodes*, 331 U. S. 100, 107–108.

[15] In that case, the Board, rather than a private party, had instituted the suit to nullify the state injunction, and such suit was coupled with a proceeding under Section 10 (l) of the Act for a federal injunction in respect to the same conduct regulated by the state court. In these circumstances, the "preemption" suit could readily be regarded as "necessary in aid of [the district court's Section 10 (l)] jurisdiction," and thus within the second exception to Section 2283. Accordingly, this Court predicated its decision (347 U. S. 501) on this narrow ground and found it unnecessary to consider the other broader grounds (relevant here) advanced by the

the Government brought the suit in *Willingham*. Although this factor might have some relevance insofar as *Willingham* rested on the ground that the federal injunction was in aid of the district court's jurisdiction to restrain violations of the Price Control Act (n. 14, *supra*), it has no relevance whatever to the independent and alternative "exclusive jurisdiction" ground discussed above. For if, as the latter ground assumes, Section 2283 is inapplicable because of the state court's want of jurisdiction over the subject matter, the same deficiency in the state proceeding is present, regardless whether a public agency or a private party seeks the federal injunction.

Nor is the *Willingham* decision rendered inapposite by the fact that Section 265 of the Judicial Code, which was in effect when it was decided, has now been replaced by Section 2283. The changes in language adopted in Section 2283 were intended only to overrule legislatively the decision in *Toucey* v. *New York Life Insurance Co.*, 314 U. S. 118, pertaining to a question not material here. The Revisers expressly stated that "the revised section restores the basic law as generally understood and interpreted prior to

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Board for the inapplicability of Section 2283; the opinion specifically notes that (317 U. S. at 505, n. 2):

"In view of our ruling, we find it unnecessary to consider whether, apart from the specific exceptions contained in § 2283, the District Court was justified in enjoining this intrusion on an exclusive federal jurisdiction. Cf. *Bowles* v. *Willingham*, 321 U. S. 503, 510-511."

the Toucy [sic] decision." Reviser's Notes, H. Rept. No. 308, 80th Cong., 1st Sess., A182.[16] See discussion in Board's brief in *Capital Service*, pp. 54–56, and petitioners' brief in this case, pp. 30–36.

3. Although, for the reasons just stated, we think Section 2283, like its predecessor Section 265, has no application in this case, we submit that, were the contrary assumed, the injunction requested by petitioners should nevertheless be regarded as "expressly authorized by Act of Congress," within the contemplation of the first exception specified in Section 2283. As more fully explained in the Board's brief in *Capital Service* (pp. 57–60) and petitioner's brief in this case (pp. 34–36), it is apparent that the term "expressly authorized," as used in Section 2283, was intended to encompass not only legislative authorizations which modify the limitation of Section 2283 in *haec verba*, but also enactments which by necessary implication must carry with them power to enjoin state court proceedings conflicting with a federal jurisdiction expressly made exclusive by Congress. Indeed, most of the federal statutes which were clearly intended to be included within the first exception to Section 2283 lack precise language granting power to stay

[16] Because of the important role played by the Reviser's Notes in the legislative consideration of the Judicial Code of 1948, this Court attaches great weight to the Notes. See, e.g., *Ex Parte Collett*, 337 U. S. 55, 65–71.

state court proceedings; such power can only be found, as here, by necessary implication from the preemptive character of the federal legislation[17]

Contrary to the view of the court below and of the Second Circuit in *Underwood*, Sections 10 (j) and (l) are not the only provisions of the Act from which a power to enjoin state court proceedings invading the preempted federal field may be inferred. As we have shown (pp. 2–4, 12–13, *supra*), the inference that the states are to be excluded from the area preempted by the Act is derived from such general considerations as the scheme of the Act, the comprehensive nature of Congress' undertaking therein, and the evidence in the legislative history of the care and deliberation with which Congress selected the rights and remedies finally enacted into law. See *Automobile Workers* v. *O'Brien*, 339 U. S. 454, 456–459. Since, as we have further shown (pp. 13–17), a private party, no less than the Board, has a legally cognizable stake in protecting the field preempted by Congress against state intrusion, the implied authority to enjoin state court proceedings should exist in a private suit no less than in a suit by the Government.

For the above reasons, therefore, the Board agrees that the injunction issued by the state court in this case deprived petitioners of rights secured to them by the National Labor Relations

[17] It may be noted, moreover, that this construction of the term "expressly authorized" in Section 2283 is consistent

Act; that there were no state remedies available and adequate; that petitioners had standing to invoke the jurisdiction of the federal district court; and that the latter was not barred by Section 2283 from granting appropriate injunctive relief. Petitioners' independent legal rights are not dependent for their vindication upon the Board's initiating injunctive proceedings in federal courts. The Board has not been charged by Congress with such a duty, and is not equipped to perform it. Whether it knows of the pendency of particular cases in the lower courts is wholly fortuitous. In any event, it is not a sufficient reason for denying private parties the relief to which they are clearly entitled to suggest that the Board might possibly

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with the interpretation given to similar language in other Congressional enactments. Thus, nearly identical language is found in the general savings clause, which preserves liability incurred under statutes subsequently repealed "unless the repealing act shall * * * expressly provide [to the contrary]." 16 Stat. 431. As this Court concluded in respect thereto, under this language the preservation of liability so provided "must be enforced unless either by express declaration *or necessary implication*, arising from the terms of the [repealing] law, as a whole, it results that the legislative mind will be set at naught by giving effect to the provisions [of the general savings clause]" (emphasis supplied). *Great Northern Ry.* v. *United States*, 208 U. S. 452, 465.

be able to secure such relief for them by bringing its own suit."

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[18] In the *Underwood* case, 35 L. R. R. M. at 2343, the Second Circuit also noted but did not consider the suggestion that "the inroads made on [the Norris-LaGuardia Act] by the Labor-Management Relations Act may not be widened by mere implication to permit a federal court to grant" relief of the kind sought here. The decisions in the cases cited *supra*, p. 17, n. 12, except the last which does not touch upon the labor relations field, implicitly recognize that a federal suit by a private party to enjoin state encroachment upon exclusive federal jurisdiction is not barred by the Norris-LaGuardia Act. The Norris-LaGuardia Act deprives federal courts of jurisdiction to issue injunctions in cases "involving or growing out of a labor dispute," except in conformity with its provisions. 47 Stat. 70, 29 U. S. C. 101. A preemption suit of the kind involved here, however, does not present a "labor dispute" within this statute, for the question on the merits does not entail adjudication of "any controversy concerning terms or conditions of employment," or employee representation (Section 13, 29 U. S. C. 113), but merely a determination as to where authority to decide such controversy shall reside, *i. e.*, in the state or a federal tribunal. Cf. *Railway Employees Co-op Ass'n* v. *Atlantic B & C Ry. Co.*, 22 F. Supp. 510, 513 (D. Ga.).

Moreover, even if it were thought that this is "a case involving or growing out of a labor dispute" within the meaning of Norris-LaGuardia, the injunction requested by petitioners is nonetheless unaffected thereby. Thus, petitioners did not seek to enjoin any of the acts which that statute exempts from the injunctive process (Section 4, 29 U. S. C. 104), and by the pleadings and the proceedings for a preliminary injunction, petitioners substantially satisfied the statutory prerequisites to the issuance of an injunction in a case involving a labor dispute (Sections 7, 8 and 9, 29 U. S. C. 107, 108, 109). See R. 16-21, 27.

Accordingly, it is respectfully submitted that the judgment of the Court of Appeals for the Sixth Circuit is erroneous and should be reversed.

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